INDEX TO APPENDIX

Index Continued

	Original	Print
Proceedings in U.S.C.A. for the District of Columbia Circuit	261	261
Opinion, Prettyman, J.	261	261
Dissenting opinion, Bazelon, J.	265	265
Judgment	266	265
Clerk's certificate (omitted in printing)	268	
Order allowing certiorari	269	266

In The

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL NO. 11

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

Respondent

No. 12,896

PETITION TO SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX

Chronological List of Relevant Docket Entries

8. 6.53	Charge filed, Office Employees International Union, Local No. 11 (Petitioner) against 8 organizations, Case No. 36-CA-410
5. 7.54	Amended charge filed by Petitioner, Case No. 36-CA-410
6.25.54	Complaint and notice of hearing issued by Regional Director, Case No. 36-CA-410.
7. 1.54	Order rescheduling hearing and extending time in which to answer, Case No. 36-CA-410.
7.10.54	Answer of Warehousemen Local No. 206, No. 36-CA-410
7.12.54	Answer of Security Plan Office, No. 36-CA-410
7.21.54	First Hearing Opened
7.22.54	First Hearing Closed
8.10.54	Charge filed by Petitioner, Case No. 36-CA-637
8.10.54	Charge filed by Petitioner, Case No. 36-CA-638
8.10.54	Charge filed by Petitioner, Case No. 36-CA-639
8.12.54	Recess of Hearing to Aug. 31 by Trial Examiner Bennett
8.13.54	Order Consolidating Cases and Notice of Hearing and Amended Complaint, Cases No. 36-CA-410, 637, 638, 639.
8.13.54	Charge against International and Joint Council, Case No. 36-CA-647
8.17.54	Amendment to Consolidated Complaint, Cases No. 36-CA-410, 637, 638, 639
8.17.54	Complaint Issued, No. 36-CA-647
8.17.54	Order Consolidating Cases 36-CA-410, 637, 638, 639, 647, and Notice of Hearing
8.18.54	Charge, Case No. 36-CA-648
8.19.54	Complaint Issued, Case No. 36-CA-648
8.19.54	Third Order Consolidating Cases and Notice of Hearing

8.27.54 Trial Examiner's Recess of Hearing Until Sept. 13, 1954
8.31.54 Answer, William C. Earhart, No. 36-CA-648
9. 8.54 Answer, Teamsters Building Association, No. 36-CA-637
9. 8.54 Answer, Warehousemen's Local 206, No. 36-CA-639
9. 8.54 Answer, Joint Council, No. 36-CA-647
9.13.54 Amended Charge, Case No. 36-CA-648
9.13.54 Answer, International and Local 223, Cases No. 36-CA-637, 639
9.13.54 Answer, International, No. 36-CA-647
9.13.54 Answer, International and Sweeney, Case No. 36-CA-648
9.16.54 Second Hearing Opened
9.21.54 Second Hearing Closed
1.10.55 Trial Examiner's Intermediate Report
2.14.55 General Counsel's Exceptions to Intermediate Report
2.15.55 Exceptions of Respondents Local 206, Joint Council and Building Association to Intermediate Report Received by NLRB
2.17.55 Exceptions of Respondents International, Earhart, Local 223 and Sweeney received by NLRB
5.11.55 Notice of Hearing for Oral Argument Issued
5.24.55 Oral Argument Before NLRB
8.25.55 Decision and Order Issued by NLRB

1322

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging

party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 5 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-410
Date Filed 8/6/53
Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer SEE ATTACHED EXHIBIT I
Address of Establishment (Street and number, city, zone, and State) 1020 N. E. Third Avenue, Portland 12, Oregon
Number of Workers Employed 24
Type of Establishment (Factory, mine, wholesaler, etc.)
Identify principal product or service Labor Union
The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) and (3) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Locals No. 162; 206; 255; 358; 305; Joint Council of Teamsters No. 37; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Teamsters Building Association and Security Administration Office, hereinafter called "Teamsters Unions", all employed members of Office Employes International Union, AFL, Local No. 11,

and had collective bargaining contracts with said Office Employes International Union, AFL, Local No. 11, hereinafter called "Office Employes Union".

These contracts herein referred to continued in full force and effect to April 1, 1953. Prior to April 1, 1953, and on or about January 28, 1953, Office Employes Union notified the Teamsters Unions herein above charged, as well as Locals No. 809, 499, 281, 223 and 220, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, requesting the opening of contracts for renegotiations. Following said date of January 28, 1953, and on or about February 9, 1953, representatives of the Office Employes' Union met with a Committee of the Teamsters Unions regarding the Office Employes Union's proposals for new contracts. No agreement was reached at this session nor at a subsequent date.

Teamsters Unions violated Section 8 (a) (1) and (3) of the National Labor Relations Act of 1947, as amended, in that subsequent to February 9, 1953, and on or about

(SEE ATTACHED EXHIBIT II)

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge Office Employes International Union Local No. 11

4. Address (Street and number, city, zone, and State) 1008 S. W. Sixth Avenue, Portland, Oregon
Telephone No. BEacon 5900

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) Office Employes International Union

6. Address of National or International, if any (Street and number, city, zone, and State) 625 Bond Building, Washington 5, D. C.
Telephone No.

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ THOMAS G. CURRENT
Business Representative

Date August 6, 1953

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

1323

NAMES OF EMPLOYERS CHARGED EXHIBIT I

Int. Bro. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Local No. 162
Int. Bro. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Local No. 206
Int. Bro. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Local No. 255
Int. Bro. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Local No. 358
Int. Bro. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Local No. 305
Joint Council of Teamsters No. 37, Int. Bro. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL

Int. Bro. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Teamsters Building Association
Int. Bro. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, Security Administration Office

1324

BASIS OF THE CHARGE (Continued) EXHIBIT H

the last part of May, 1953, one, Mary Ermence, Administrator of the Security Administration Office of the Teamsters Unions, called a meeting of all employees in the Security Administration Office and advised them not to pay dues into Office Employes Union. These meetings were held during office hours and on employers' time and premises, and the presence of all employees was required. Subsequent meetings were called in a like manner by the said Administrator, and the employees were advised that they should all drop their membership with Office Employes Union and join Teamsters Unions, who are the employers herein, or their employment would be jeopardized.

At these meetings, the Administrator, Mary Ermence, advised that she was speaking for the Administrators of the Security Administration Office and on behalf of said Administrators. Various other Office Employes Union members were contacted by other officers of the employers listed herein and directed to join the Teamsters Unions or be discharged.

Teamsters Unions have violated Section 8 (a) (1) and (3) of the Labor Management Relations Act of 1947, as amended, in that one Dorothy Carlisle, who refused to join Teamsters Unions, was discharged on June 12, 1953, and that one, Janet Walton, who was threatened with discharge if she refused to join Teamsters Unions, and who refused to join Teamsters Unions, resigned from her employment in June of 1953 because of such coercion.

Teamsters Unions have violated Section 8 (a) (1) and (5) of the Labor Management Relations Act of 1947, as amended, in that the Teamsters Unions have failed, refused, and neglected to bargain with Office Employes Unions since April 1, 1953, despite the fact that all employees of Teamsters Unions were employees of Office Employes Union.

Teamsters Unions have violated 8 (a) (1) and (2) of the Labor Management Relations Act of 1947, as amended, in that the Teamsters Unions, in which membership of employees of employer is required, is dominated, formed and administered by employers herein.

1328

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-410
Date Filed 8/6/53
Amended: 5/7/54
Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employers See Appendix A attached
Address of Establishment (Street and number, city, zone, and State) 1020 N. E. Third Avenue, Portland 12, Oregon
Number of Workers Employed 24
Nature of Employer's Business (State whether manufacturing, mining, construction, transportation, communication, other public utility, wholesale or retail trade, service, etc., and give principal product or type of service rendered.) Labor Union

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. *Basis of the Charge* (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

In or about April 1953, the employers named in Appendix A attached, by their officers, agents, or representatives, determined that a labor organization known as Grocery, Meat, Motorcycle and Miscellaneous Drivers Local No. 223, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, should take into membership and represent their office employees and all other office employees working in the Teamsters Building located at 1020 N.E. Third Avenue, Portland, Oregon, and thereafter the employers named in Appendix A attached assisted and supported said Local No. 223 in organizing their office employees, and at all times since the above date they have dominated and interfered with the administration of said Local No. 223.

By the acts set forth in the paragraph above, and by other acts and conduct, the employers have interfered with, restrained and coerced their employees, and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed them by Section 7 of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge Office Employes International Union, Local No. 11

4. Address (Street and number, city, zone, and State) 1008 S.W. Sixth Avenue, Portland, Oregon
Telephone No. BEacon 5900

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) Office Employes International Union

6. Address of National or International, if any (Street and number, city, zone, and State) 625 Bond Building, Washington 5, D. C.
Telephone No.

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ JAMES N. BEYER
Secretary-Treasurer

Date May 6, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

1329

APPENDIX A

NAMES OF EMPLOYERS CHARGED

General Teamsters, Auto Truck Drivers and Helpers, Local No. 162
Warehousemen Local No. 206
Automotive, Garage and Service Station Employees, Local No. 255

Dairy, Ice and Ice Cream Employees
Local No. 305
Laundry and Dry Cleaning Drivers
Local No. 358
Teamsters Joint Council No. 37
Teamsters Building Association
Oregon Teamsters' Security Plan Office

1332

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE; and
WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and
OFFICE EMPLOYEES INTERNATIONAL UNION,
LOCAL No. 11

COMPLAINT

It having been charged by Office Employees International Union, Local No. 11, that Oregon Teamsters' Security Plan Office and Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein jointly called the Respondents, have engaged in and are now engaging in unfair labor practices at Portland, Oregon, affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Regional Director for the Nineteenth Region, acting pursuant to the Board's

Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I

Oregon Teamsters' Security Plan Office, hereinafter called Respondent Security Office, was established pursuant to a trust agreement entered into on the one hand by trustees designated by Oregon and Washington affiliates of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called the Teamsters International, and on the other hand by trustees designated by various employers having collective bargaining relationships with the aforesaid affiliates of Teamsters International. Respondent Security Office maintains its principal office in Portland, Oregon, where at all times alleged hereinafter it has employed a complement of seven to 10 office clerical employees. It is engaged primarily

in receiving and collecting from employers throughout the State of Oregon and in Clark and Cowlitz Counties in the State of Washington, who are participants in some twenty employee health and welfare programs covering members of affiliates of Teamsters International throughout said area, employer contributions to such programs. Respondent Security Office further pays over to Occidental Life Insurance Company of California at San Francisco, California, a sum of money for premiums on the insurance policies issued by Occidental Life to provide the benefits established by the health and welfare programs. It also receives all employee claims filed under the several programs, maintains records thereof, processes same, recommends to Occidental Life payment thereof, and transmits payments to claimants.

Respondent Security Office receives and collects and pays as premiums to Occidental Life monies in excess of

$1,000,000.00 annually. From the amounts Respondent Security Office pays to Occidental Life the latter refunds to the former for expenses of administration, an amount in excess of $50,000.00 annually.

II.

Warehousemen Local No. 206, hereinafter called Respondent Local 206, maintains its principal office in Portland, Oregon. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, chartered by and subject to the control of Teamsters International. It is engaged primarily in representing its members, consisting of warehouse and other employees, in their collective bargaining relationships with numerous companies which operate in and around Portland, Oregon, many of which are engaged in commerce within the meaning of Section 2(6) and (7) of the Act by virtue, *inter alia,* of being multi-state enterprises, or producing or handling goods destined far out-of-state shipment valued in excess of $25,000.00 annually, or by receiving direct shipments from out-of-state of goods valued in excess of $50,000.00. At all times alleged hereinafter, Respondent Local 206 in the operation of its business has had two office clerical employees in its employ.

III.

Respondent Local 206 and Respondent Security Office are, and at all times alleged herein have been, employers within the meaning of Section 2(2) of the Act.

IV.

Respondent Local 206 and Respondent Security Office are, and at all times alleged herein have been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

V

A. Office Employees International Union, Local No. 11, hereinafter called Office Union, is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act.

B. Local 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, hereinafter called Teamsters Local 223, was chartered by Teamsters International and is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act. It is, and at all times alleged herein has been, subjected to the complete and absolute control of Teamsters International by virtue of the latter's imposition of a trusteeship, the trustee at all times alleged herein having been John J. Sweeney, an International Representative of Teamsters International.

VI.

Commencing on or about March 1, 1953, and at all times since, the Respondents, individually and jointly, and acting in concert with the Teamsters International, and pursuant to instructions, orders or suggestions from representatives of Teamsters International, have unlawfully dominated, assisted, sponsored, maintained, and contributed support to Teamsters Local 223 by the following acts:

1. determining that their office employees should relinquish Office Union as their collective bargaining representative and become members in Teamsters Local 223;

2. promising their office employees better working conditions if they ceased their membership in Office Union and became members of Teamsters Local 223;

3. urging, persuading, and warning their office employees to refrain from assisting, becoming members

of, remaining members of, paying dues to, or attending meetings of Office Union;

4. actively soliciting membership among their office employees in Teamsters Local 223 during working hours in Respondents' Offices;

5. making implied threats of loss of employment or economic benefits in the event their office employees did not join Teamsters Local 223 and cease their affiliation with Office Union;

6. interrogating their office employees concerning their attendance at meetings of Office Union;

7. permitting their office supervisors to become members of Teamsters Local 223 and to actively participate in its activities; and

8. requiring their office employees to pay dues to Teamsters Local 223 as a condition of membership therein and as a condition of employment.

VII.

By all the acts of the Respondents, as set forth and described in paragraph VI above, and by each of said acts, the Respondents have interfered with, restrained, and coerced their office employees in the exercise of their rights guaranteed in Section 7 of the Act and have dominated and interfered with the formation and administration of Teamsters Local 223 and have contributed unlawful support and assistance to said Local, and thereby engaged in, and are thereby engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

VIII.

The activities of the Respondents, as set forth and described in paragraph VI above, occurring in connection with the operations of the Respondents, as described in

paragraphs I and II above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IX.

The activities of the Respondents, as set forth and described in paragraph VI above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (2) and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 25th day of June, 1954, issues this Complaint against Oregon Teamsters' Security Plan Office and against Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Respondents herein.

Thomas P. Graham, Jr.,
THOMAS P. GRAHAM, JR.
Regional Director,
National Labor Relations Board,
Region 19
407 U. S. Court House,
Seattle, Washington

1342

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE; and WAREHOUSEMEN LOCAL No. 206, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
and
OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11

ANSWER

Comes now WAREHOUSEMEN LOCAL NO. 206 and in answer to the complaint, admits, denies, and alleges as follows:

I

Admits Paragraph I except that this respondent alleges on information and belief that the respondent, OREGON TEAMSTERS' SECURITY PLAN OFFICE, does not collect employer contributions. Further, respondent has no knowledge of the amount of money received as premiums by the Security Plan Office or how much the Occidental Life refunds to the Security Plan Office for the expense of administration and therefore denies the second paragraph contained in Paragraph I.

II

Respondent denies each and every allegation in Paragraph II except as hereinafter specifically admitted. Respondent admits that WAREHOUSEMEN LOCAL NO. 206 maintains its principal office at Portland, Oregon, and that it is, and has been, a labor organization within the

meaning of Section 2(5) of the Act, and that it is chartered by the Teamsters' International and operates in accordance with the Teamsters' International Constitution and to that extent is subject to the control of the Teamsters' International. It further admits that it is engaged primarily in

representing its members, consisting of warehouse and other employees, in their collective bargaining relationships with numerous companies which operate in and around Portland, and further admits that in its operation it has had two office clerical employees in its employ. Insofar as the allegations contained in this paragraph allege that the employers with which Local 206 has had collective bargaining agreements are engaged in commerce within the meaning of Section 2(6) and (7) of the Act, the amount of dollar volume in connection therewith, this respondent has no knowledge with which to form a belief and therefore denies the same.

III

Respondent denies Paragraphs III, IV, VI, VII, VIII and IX.

IV

Admits Paragraph V.

V

Respondent WAREHOUSEMEN LOCAL NO. 206 specifically denies that it has committed any unfair labor practice as alleged in the complaint, and specifically denies that it is an employer engaged in commerce within the meaning of Section 2, sub-paragraphs (6) and (7) of the Act, and further states that if it is engaged in commerce, it would not effectuate the purposes of the Act for the Board to take jurisdiction.

have been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

VII.

Office Employes International Union, Local No. 11, hereinafter called Office Union, is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act.

VIII.

In or about the month of March 1954, Respondent International and Respondent Local 223, in accordance with a policy of Respondent International that all office employees of its Local Unions must join a Local Union, acting through the Secretary of Respondent Local 223, solicited and instructed the office employee of Respondent Local 223 to become a member of Respondent Local 223 and to withdraw her membership in Office Union.

IX.

On or about July 29, 1954, Respondent Building Association, acting pursuant to instructions from Respondent International, discharged its employee Virginia Olstad, and has at all times thereafter refused to reinstate said employee because of her membership in and activities on behalf of Office Union, or because of her honoring a subpena of the Board requiring her to testify at a hearing being conducted in Case No. 36-CA-410 on July 21, 1954, wherein one of the Respondents was a Local Union chartered by Respondent International.

1362

X.

On or about June 10, 1954, Respondent Local 206 caused the employment of its employee June Cook to be terminated, and has at all times thereafter refused to reinstate

WHEREFORE, respondent WAREHOUSEMEN LOCAL NO. 206 having fully answered the complaint on file herein, prays that the same be dismissed.

ANDERSON, FRANKLIN & LANDYE
By /s/
JAMES LANDYE
Attorneys for Respondent
Warehousemen Local No. 206

1344

STATE OF OREGON
COUNTY OF MULTNOMAH } SS.

I, JACK ESTABROOK, being first duly sworn, say that I am the Secretary of Respondent WAREHOUSEMEN LOCAL NO. 206 in the within entitled cause and that the foregoing Answer is true as I verily believe.

JACK ESTABROOK
Jack Estabrook
Teamsters' Building
Portland, Oregon

Subscribed and sworn to before me this 10th day of July, 1954.

WESLEY A. FRANKLIN
Notary Public for Oregon

My Commission Expires: 12/22/56

I hereby certify that I am Attorney for Warehousemen Local No. 206, and that I have served a copy of this Answer by mail upon Richard R. Morris, Failing Building, Portland, Oregon, attorney for the Oregon Teamsters' Security Plan Office, and a copy of this Answer by mail upon Paul

said employee because of her membership in and activities on behalf of Office Union.

XI.

By the action of Respondent Local 223, which Respondent International has under trusteeship, in soliciting and instructing an employee of Respondent Local 223 to become a member of Respondent Local 223 and withdraw from Office Union, as set forth and described in paragraph VIII above, and by instructing Respondent Building Association to discharge Virginia Olstad, as set forth and described in paragraph IX above, Respondent International has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act and has dominated and contributed unlawful support and assistance to Respondent Local 223, and thereby engaged in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

XII.

By the discharge of Virginia Olstad, as set forth and described in paragraph IX above, Respondent Building Association and Respondent International have discriminated, and now are discriminating against employees in regard to hire or tenure of employment, and thus discouraged and now are discouraging membership in Office Union, and thus encouraged and now are encouraging membership in Respondent Local 223, and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act; and by the same conduct, Respondent Building Association and Respondent International have discriminated, and now are discriminating, against employees because they were supporting charges filed under the Act and because they were about to give testimony under the Act, and thereby engaged in, and are thereby engaging in unfair labor practices within the mean-

T. Bailey, 1207 SW Third Avenue, Portland, Oregon, attorney for Office Employees International Union Local No. 11 this 10th day of July, 1954.

JAMES LANDYE
of Attorneys for Respondent
Warehousemen Local
No. 206

1345

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE; and
WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and
OFFICE EMPLOYEES INTERNATIONAL UNION,
LOCAL No. 11

ANSWER

Comes now William C. Earhart, Administrator, and in answer to the complaint herein, admits, denies and alleges as follows:

I.

Denies each and every allegation contained in paragraph I, and in this connection, Respondent alleges:

A number of local unions affiliated with the International Brotherhood of Teamsters, Chauffeurs and Warehousemen of America and employers whose employees are represented by one of said locals have established Trust agreements. Pursuant to the terms of the Trust agreements,

funds are provided to purchase health and welfare benefits for the employees of the employer-party to the trust agreement and who are represented by one of said locals.

Said Trust agreements provide for the appointment by the Trustees of an Administrator of the Trust. Respondent is the duly appointed and acting Administrator of said Trust agreements. As such Administrator, he maintains an office, employing several persons. As such Administrator, he processes and pays claims of employees entitled to the benefits provided pursuant to the terms of the Trust agreements. The premiums paid for the insurance procured pursuant to the Trust agreements exceed $1,000,000.00 per year. The Administrator receives in excess of

$25,000.00 per year from the insurance carrier to pay the expenses of his office.

II.

Answering paragraph II, Respondent admits that Warehousemen's Union Local No. 206, is a labor organization with an office in Portland, Oregon; admits it has labor contracts with employers in Portland, Oregon; save as admitted herein, Respondent denies each allegation in said paragraph.

III.

Respondent denies each and every allegation contained in paragraphs III, IV, V, VI, VII, VIII and IX.

IV.

Respondent alleges it is not subject to the Labor-Management Relations Act; it has not committed any unfair labor practice.

WHEREFORE, having fully answered the Complaint herein, Respondent demands that it be dismissed.

RICHARD R. MORRIS
Attorney for
Respondent Administrator

STATE OF OREGON
COUNTY OF MULTNOMAH } ss.

I, WILLIAM C. EARHART, being first duly sworn, say that I am the Administrator in the within-entitled cause and that the foregoing Answer is true as I verily believe.

WILLIAM C. EARHART

SUBSCRIBED and sworn to before me this 12th day of July, 1954.

LILLIAN R. BRILL
Notary Public for the
State of Oregon
My Commission Expires: 5/4/56

1347

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-637
Date Filed 8/10/54
Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and Teamsters Building Association, Inc.

Address of Establishment (Street and number, city, zone, and State) 1020 N.E. Third Avenue, Portland 12, Oregon; 100 Indiana Avenue N.W., Washington, D. C. (International)

Number of Workers Employed

Type of Establishment (Factory, mine, wholesaler, etc.)

Identify principal product or service Labor Union

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) and (4) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about July 29, 1954, the above named employer, by its officers, agents and representatives, discharged Virginia Olstad, one of its employees, because of her activities on behalf of Office Employes International Union, AFL, and because of her honoring a subpoena to appear before the N.L.R.B. in Case No. 36-CA-410. The above described conduct was in violation of Section 8(a)(1) of the Labor Management Relations Act of 1947, as amended, in that there was interference with the rights of the above named employee under Section 7 of said Act.

The above conduct was in violation of Section 8(a)(3) of said Act in that the discharge was discriminatory and an attempt to discourage Virginia Olstad from membership in Office Employes International Union, AFL, and to encourage her to become a member of Local No. 223 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL.

The above described conduct was in violation of Section 8(a)(4) in that said discharge was based in part upon said Virginia Olstad's response to subpoena in a case brought under said Act.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number) Office Employes International Union Local No. 11

4. Address (Street and number, city, zone, and State) 1008 S.W. Sixth Avenue, Portland, Oregon

Telephone No. BEacon 5900

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) Office Employes International Union

6. Address of National or International, if any (Street and number, city, zone, and State) 625 Bond Building, Washington 5, D. C.

Telephone No.

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ JAMES N. BEYER
Secretary-Treasurer

Date August 10, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36–CA–647
Date Filed 8–13–54
Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Joint Council of Drivers, No. 37

Address of Establishment Street and number, city, zone, and State Interna: 100 Indiana Ave. N.W., Washington, D. C.; 37: 1020 N.E. Third Avenue, Portland 12, Oregon

Number of Workers Employed 2

Type of Establishment (Factory, mine, wholesaler, etc.) Labor Union

Identify principal product or service

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) (3) and (4) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about August 13, 1954, the above-named employers, by their officers, agents and representatives, discharged Irene Morcom, an employee, because of her membership in and activities on behalf of Office Employes International Union, Local No. 11, and because of her honoring a subpena to appear before the N.L.R.B. hearing in Case No. 36–CA–410.

1350

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-638
Date Filed 8/10/54
Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and Local No. 223 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL.

Address of Establishment (Street and number, city, zone, and State) 1020 N.E. Third Avenue, Portland 12, Oregon; 100 Indiana Avenue N.W., Washington, D. C. (International)

Number of Workers employed 1
Type of Establishment (Factory, mine, wholesaler, etc.)
Identify principal product or service Labor Union
The above-named employer has engaged in and is engag-

The above conduct constitutes interference with the rights of employees under Section 7 of the Act, and discourages membership in Local No. 11, and encourages membership in Teamster Local 223, and amounts to unlawful support and assistance to Teamster Local 223 all in violation of Section 8(a)(1)(2)(3) and (4) of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge Office Employes International Union, Local No. 11

4. Address (Street and number, city, zone, and State) 1008 S. W. Sixth Avenue, Portland, Oregon
Telephone No. BE 5900

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled when charge is filed by a labor organization) Office Employes International Union

6. Address of National or International, if any (Street and number, city, zone, and State)
625 Bond Building, Washington 5, D. C.
Telephone No.

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowedge and belief.

By JAMES N. BEYER
Secretary-Treasurer

Date August 13, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U.S. Code, Title 18, Section 80)

ing in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above named employers violated Sections 8(a)(1) and 8(a)(2) of the Labor Management Relations Act of 1947, as amended, in that during the month of April 1954 said employer, by its officers, agents and representatives, dominated and interferred with the administration of the labor organization and interferred with, restrained and coerced its employee in the exercise of the rights guaranteed in Section 7 of the Labor Management Relations Act in that said employer instructed and solicited its employee to become a member of Local No. 223. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL.

3. Full Name of Party Filing Charge (if labor organization, give full name, including local name and number) Office Employes International Union Local No. 11

4. Address (Street and number, city, zone, and State) 1008 S.W. Sixth Avenue, Portland, Oregon

Telephone No. BEacon 5900

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) Office Employes International Union

6. Address of National or International, if any (Street and number, city, zone, and State) 625 Bond Building, Washington 5, D. C.

Telephone No.

7. Declaration

I declare that I have read the above charge and that the

statements therein are true to the best of my knowledge and belief.

By /s/ JAMES N. BEYER
Secretary-Treasurer

Date 8/10/54

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

1353

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write in This Space

Case No. 36-CA-639
Date Filed 8/10/54
Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought

Name of Employer Local No. 206 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL

Address of Establishment (Street and number, city, zone, and State) 1020 N.E. Third Avenue, Portland 12, Oregon

Number of Workers Employed

Type of Establishment (Factory, mine, wholesaler, etc.) Labor Union

Identify principal product or service

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. *Basis of the Charge* (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above named employer, by its officers, agents and representatives, caused the termination of employment of June Cook, one of its employees, on or about June 10, 1954, because of her membership in and activities on behalf of Office Employes International Union, AFL.

The above described conduct of the employer was in violation of Section 8(a)(1) and Section 8(a)(3) of the Labor Management Relations Act of 1947, as amended, in that said employer interferred, restrained and coerced said employee in the exercise of her rights guaranteed in Section 7 of said Act, and constituted discrimination in regard to hire or tenure of employment by discouraging membership of said employee in Office Employes International Union, AFL.

3. *Full Name of Party Filing Charge* (if labor organization, give full name, including local name and number) Office Employes International Union Local No. 11

4. *Address* (Street and number, city, zone, and State) 1008 S.W. Sixth Avenue, Portland, Oregon.

Telephone No. BEacon 5900

5. *Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit* (To be filled in when charge is filed by a labor organization) Office Employes International Union

6. Address of National or International, if any (Street and number, city, zone, and State) 625 Bond Building, Washington 5, D. C.

Telephone No.

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ JAMES N. BEYER
Secretary-Treasurer

Date August 10, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

1358

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, Affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

CONSOLIDATED COMPLAINT

It having been charged by Office Employes International Union, Local No. 11, in Case No. 36-CA-637, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Teamsters Building Association, Inc.; in Case No. 36-CA-638, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and its Local 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; and in Case No. 36-CA-639, that Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, have engaged in and are now engaging in certain unfair labor

practices affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Regional Director for the Nineteenth Region, acting pursuant to the Board's Rules and Regulations, Series 6, as amended, Sections 102.15 and 102.33, hereby issues this Consolidated Complaint and alleges as follows:

1359

I.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter called Respondent International, maintains its principal office in Washington, D. C. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, which has issued charters to more than 900 affiliated Local Unions in locations throughout every state of the United States and in Canada. Through its Local Unions, Respondent International has a membership in excess of 1,000,000 persons. In carrying out its functions as a labor organization, Respondent International has officers, representatives and employees on duty throughout the United States and Canada. Respondent International has an annual revenue derived in part from the sale of supplies to its Local Unions, from a per capita tax on all dues received by its Local Unions, and from a portion of all initiation fees paid to its Local Unions, which revenue amounts to in excess of $700,000.00 annually.

II.

Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, hereinafter called Respondent Local 223, maintains its principal office in Portland, Oregon. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, char-

tered by and subject to the complete and absolute control of Respondent International by virtue of a trusteeship imposed by Respondent International. It is engaged primarily in representing its members, in their collective bargaining relationships with numerous companies which operate in and around Portland, Oregon, many of which are engaged in commerce within the meaning of Section 2(6) and (7) of the Act by virtue, *inter alia*, of being multistate enterprises, or producing or handling goods destined for out-of-state shipment valued in excess of $50,000.00 annually, or by receiving direct shipments from out-of-state of goods valued in excess of $500,000.00. At all times alleged hereinafter, Respondent Local 223 in the operation of its business has had the part-time services of one office clerical employee.

1360

III.

Teamsters Building Association, Inc., hereinafter called Respondent Building Association, is an Oregon corporation, maintaining its principal office in Portland, Oregon. It was formed by Portland, Oregon, affiliates of Respondent International, including Local No. 162, General Teamsters, Auto Truck Drivers and Helpers. Now, and at all times alleged herein, it has existed for the purpose of owning and maintaining an office building in Portland, Oregon, to provide office space to Local Unions of Respondent International located in said city, and to other affiliated bodies. At all times alleged herein, all 11 Local Unions chartered by Respondent International in Portland, Oregon, and Teamster Joint Council 37 have maintained offices in the aforesaid office building, and, in addition, office space has been provided for Respondent International's organizer, John J. Sweeney, and for Oregon Teamsters Security Plan Office which administers health and welfare programs covering members of Local Unions of Respondent Inter-

national throughout the State of Oregon and in parts of the States of Washington, Idaho and Montana. At all times alleged hereinafter, Respondent Building Association in the operation of its business has had at least one telephone operator in its employ.

IV.

Warehousemen Local No. 206, hereinafter called Respondent Local 206, maintains its principal office in Portland, Oregon. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, chartered by and subject to the control of Respondent International. It is engaged primarily in representing its members, consisting of warehouse and other employees, in their collective bargaining relationships with numerous companies which operate in and around Portland, Oregon, many of which are engaged in commerce within the meaning of Section 2(6) and (7) of the Act by virtue, *inter alia*, of being multi-state enterprises, or producing or handling goods destined for out-of-state shipment valued in excess of $50,000.00 annually, or by receiving direct shipments from out-of-state of goods valued in excess of $500,000.00. At all times alleged hereinafter, Respondent Local 206 in the operation of its busi-

ness has had two office clerical employees in its employ.

V.

Respondents International, Local 223, Building Association, and Local 206 are, and at all times alleged herein have been, employers within the meaning of Section 2(2) of the Act.

VI.

Respondents International, Local 223, Building Association, and Local 206 are, and at all times alleged herein

ing of Section 8(a)(4) of the Act; and by the same conduct, Respondent Building Association and Respondent International have interfered with, restrained and corced em-

ployees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby engaged in and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

XIII.

By instructing its own employee to join it and to withdraw her membership in Office Union, as set forth and described in paragraph VIII above, Respondent Local 223 has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act and in its capacity as an employer has dominated and contributed unlawful support and assistance to itself in its capacity as a labor organization, and thereby engaged in, and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

XIV.

By terminating the employment of June Cook, as set forth and described in paragraph X above, Respondent Local 206 has interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and has discriminated, and now is discriminating against employees in regard to hire or tenure of employment, and thus discouraged and now is discouraging membership in Office Union, and thus encouraged and now is encouraging membership in Respondent Local 223, and thereby engaged in, and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

XV.

The activities of the Respondents, as set forth and described in paragraphs VIII, IX and X above, occurring in connection with the operations of the Respondents, as described in paragraphs I, II, III and IV above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XVI.

The activities of the Respondents, as set forth and described in paragraphs VIII, IX and X above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (2), (3) and (4), and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 13th day of August, 1954, issues this Consolidated Complaint against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL; Teamsters Building Association, Inc.; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; and Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, the Respondents herein.

THOMAS P. GRAHAM, JR.
Thomas P. Graham, Jr.,
Regional Director
National Labor Relations Board,
19th Region
407 U. S. Court House,
Seattle 4, Washington

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, Affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

AMENDMENT TO CONSOLIDATED COMPLAINT

Upon August 13, 1954, a Consolidated Complaint issued in the above-entitled proceedings. Acting pursuant to Section 102.17 of the Board's Rules and Regulations, Series 6, as amended, the aforesaid Consolidated Complaint is hereby amended by (1) adding as a second paragraph to paragraph IX of the Consolidated Complaint, the following allegation:

On or about July 28, 1954, Respondent Building Association, acting pursuant to instructions from Respondent International, relieved employee Irene Morcom of the

duties she had been performing for Respondent Building Association and simultaneously ceased paying her an amount of ten (10) dollars per week which she had been receiving in payment for her services for Respondent Building Association, and has at all times thereafter refused to reinstate said employee because of her membership in and activities on behalf of Office Union, or because of her honoring a subpena of the Board requiring her to testify at the aforementioned hearing conducted in Case No. 36-CA-410;

1370

by (2) inserting in the sixth line of paragraph XI, after the words "Virginia Olstad," the following words:

and to terminate the services of Irene Morcom;

and by (3) inserting in the first line of paragraph XII, after the words "Virginia Olstad," the following words:

and by terminating the services of Irene Morcom.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 17th day of August, 1954, issues this Amendment to Consolidated Complaint.

PATRICK H. WALKER
Patrick H. Walker,
Acting Regional Director
National Labor Relations Board

1371

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization

1374

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and JOINT COUNCIL OF DRIVERS, No. 37
and
OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

COMPLAINT

It having been charged by Office Employes International Union, Local No. 11, in Case No. 36-CA-647, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Joint Council of Drivers, No. 37, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Regional Director for the Nineteenth Region, acting pursuant to the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter called Respondent International, maintains its principal office in Washington, D. C. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, which has issued charters to more than 900 affiliated Local Unions in locations throughout every state of the United States and in Canada.

Through its Local Unions, Respondent International has a membership in excess of 1,000,000 persons. In carrying out its functions as a labor organization, Respondent International has officers, representatives and employees on

duty throughout the United States and Canada. Respondent International has an annual revenue derived in part from the sale of supplies to its Local Unions, from a per capita tax on all dues received by its Local Unions, and from a portion of all initiation fees paid to its Local Unions, which revenue amounts to in excess of $700,000.00 annually.

II.

Joint Council of Drivers, No. 37, hereinafter called Respondent Joint Council, is and, at all times alleged herein, has been a labor organization within the meaning of Section 2(5) of the Act, having as affiliates twenty-one Local Unions chartered by Respondent International in the State of Oregon, and two Local Unions chartered by Respondent International in the State of Washington. Respondent Joint Council maintains its principal office in Portland, Oregon, and is engaged primarily in supervising and coordinating relations among its member locals. Respondent Joint Council was formed pursuant to and as required by the Constitution of Respondent International and is subject to control by Respondent International. Its income is derived from dues paid by the Local Unions affiliated with it. At all times herein alleged, Respondent Joint Council has had at least two office clerical employees in its employ.

III.

Respondents International and Joint Council are, and at all times alleged herein have been, employers within the meaning of Section 2(2) of the Act.

IV.

Respondents International and Joint Council are, and at all times alleged herein have been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

V.

Office Employes International Union, Local No. 11, hereinafter called Office Union, is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act.

VI.

On or about August 13, 1954, Respondent Joint Council, acting pursuant to instructions from Respondent International, discharged its employee Irene Morcom, and has at all times thereafter refused to reinstate said employee because of her membership in and activities on behalf of Office Union, or because of her honoring a subpena of the Board, requiring her to testify at a hearing being conducted in Case No. 36-CA-410 on July 21, 1954, wherein one of the Respondents was a Local Union chartered by Respondent International and affiliated with Respondent Joint Council.

VII.

By the discharge of Irene Morcom, as set forth and described in paragraph VI above, Respondent Joint Council and Respondent International have discriminated, and now are discriminating against employees in regard to hire or tenure of employment, and thus discouraged and now are discouraging membership in Office Union, and thus encouraged and now are encouraging membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, a labor organization within the meaning of Section 2(5) of the Act, hereinafter called Local 223, and thereby en-

gaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act; and by the same conduct, Respondent Joint Council and Respondent International have discriminated, and now are discriminating, against employees because they were supporting charges filed under the Act, and because they were about to give testimony under the Act, and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(4) of the Act; and by the same conduct, Respondent Joint Council and Respondent International have dominated and contributed unlawful support and assistance to Local 223, and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act; and by the same conduct, Respondent Joint Council and Respondent Inter-

national have interfered with, restrained and coerced employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby engaged in and are thereby engaging in unfair labor practices within the meaning of Section 3(a)(1) of the Act.

VIII.

The activities of the Respondents, as set forth and described in paragraph VI above, occurring in connection with the operations of the Respondents, as described in paragraphs I and II above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IX.

The activities of the Respondents, as set forth and described in paragraph VI above, constitute unfair labor

practices affecting commerce within the meaning of Section 8(a)(1)(2)(3) and (4), and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 17th day of August, 1954, issues this Complaint against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Joint Council of Drivers, No. 37, the Respondents herein.

PATRICK H. WALKER
Patrick H. Walker,
Acting Regional Director
National Labor Relations Board,
19th Region
407 U. S. Court House,
Seattle 4, Washington

1383

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9(f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write In This Space

Case No. 36-CA-648
Date Filed 8/19/54
Compliance Status Checked By: MK

1. Employer Against Whom Charge Is Brought
Name of Employer Please see attached sheet
Address of Establishment (Street and number, city, zone, and State) Int'l.—100 Indiana Ave. N.W., Washington, D.C.; Plan Off.—1020 N.E. Third Ave., Portland 12, Oregon
Number of Workers Employed 11
Type of Establishment (Factory, mine, wholesaler, etc.) Labor union
Identify principal product or service
The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (2) (3) and (4) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-named employers, by their officers, agents or representatives, on or about August 13, 1954, discharged employee Marion Henry and on or about August 16, 1954, discharged employee Mary Ermence because of their membership in and activities on behalf of Office Employes' International Union, Local No. 11; because of their refusal to support Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; because of their having engaged in concerted activities within the meaning of Section 7 of the Act; because they had announced they would honor subpoenas of the Board requiring them to testify at a hearing being conducted in Case No. 36-CA-410 wherein Local No. 223 was named as a dominated union and would testify truthfully therein.

The above-named International and John J. Sweeney prior to the hearing in Case No. 36-CA-410 further at-

tempted to dissuade employees from honoring Board subpoenas and from testifying in the aforementioned Board hearing and attempted to induce prospective witnesses to commit perjury.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge Office Employes International Union, Local No. 11

4. Address (Street and number, city, zone, and State) 1008 S. W. Sixth Avenue, Portland, Oregon
Telephone No. BEacon 5900

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization) Office Employes International Union

6. Address of National or International, if any (Street and number, city, zone, and State) 707 Continental Building, 1012 - 14th Street, Washington 5, D. C.
Telephone No. Ex 3-4464

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

Secretary-Treasurer,
By /s/ JAMES N. BEYER

Date August 18, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

1384

NAME OF EMPLOYER: (From previous page)
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, AFL, and its agent, John J. Sweeney, and Oregon Teamster Security Plan Office and

William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund.

1387

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ITS AGENT, JOHN J. SWEENEY, AND OREGON TEAMSTERS' SECURITY PLAN OFFICE, AND WILLIAM C. EARHART, ADMINISTRATOR THEREOF, AND OF TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL NO. 11

COMPLAINT

It having been charged by Office Employes International Union, Local No. 11, in Case No. 36-CA-648, that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its Agent, John J. Sweeney, and Oregon Teamsters' Security Plan Office, and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth in the Labor Management Relations Act of 1947, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Acting Regional Director for the Nineteenth Region, acting pursuant to the Board's Rules and Regulations, Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter called Respondent International, maintains its principal office in Washington, D. C. It is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act, which has issued charters to more than 900 affiliated Local Unions in locations throughout every state of the United States and in Canada.

Through its Local Unions, Respondent International has a membership in excess of 1,000,000 persons. In carrying out its functions as a labor organization, Respondent International has officers, representatives and employees on duty throughout the United States and Canada. Respondent International has an annual revenue derived in part from the sale of supplies to its Local Unions, from a per capita tax on all dues received by its Local Unions, and from a portion of all initiation fees paid to its Local Unions, which revenue amounts to in excess of $700,000.00 annually.

II.

At all times alleged herein, Respondent John J. Sweeney has been a paid representative of Respondent International and has acted as agent of said International.

III.

Oregon Teamsters' Security Plan Office, hereinafter called Respondent Security Office, was established pursuant to trust agreements entered into on the one hand by trustees designated by Local Unions chartered by Respondent International in the State of Oregon and in the State of Washington, and on the other hand by trustees designated by various employers having collective bargaining relationships with said Local Unions. Respondent Security

Office maintains its principal office in Portland, Oregon, where at all times alleged hereinafter it has employed a complement of seven to ten office clerical employees. Since about April 1954, William C. Earhart has been designated administrator of Respondent Security Office and of Teamsters Security Administration Fund, from which the expenses of operating Respondent Security Office are obtained. Respondent Security Office was established for the purpose of receiving and collecting from employers throughout the State of Oregon, and in parts of the States of Washington, Idaho, and Montana, who are participants in health and welfare programs covering employees represented by Local Unions of Respondent International, employer contributions to such programs. Respondents

Security Office and Earhart pay over to Occidental Life Insurance Company of California at San Francisco, California, a sum of money for premiums on the insurance policies issued by Occidental Life to provide the benefits established by the health and welfare programs. They also receive all employee claims filed under the several programs, maintain records thereof, process same, recommend to Occidental Life payment thereof, and transmit payments to claimants.

Respondents Security Office and Earhart receive and collect and pay as premiums to Occidental Life monies in excess of $2,000,000.00 annually. From these amounts Occidental Life refunds to the Teamster Security Administration Fund for expenses of administering Respondent Security Office, an amount in excess of $80,000.00 annually.

IV.

Respondents International and Sweeney and Respondents Security Office and Earhart are, and at all times alleged herein have been, employers within the meaning of Section 2(2) of the Act.

V.

Respondents International and Sweeney and Respondents Security Office and Earhart are, and at all times alleged herein have been, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

VI.

Office Employes International Union, Local No. 11, hereinafter called Office Union, is, and at all times alleged herein has been, a labor organization within the meaning of Section 2(5) of the Act.

VII.

During the month of July 1954, Respondent International and Respondent Sweeney, individually and as agent for Respondent International, attempted to dissuade employees from honoring Board subpenas in Case No. 36-CA-410, and from testifying at the hearing in said case, and further sought to induce employees to withhold information from the Board when testifying at said hearing and to perjure themselves.

VIII.

On or about August 13, 1954, Respondents Security Office and Earhart, acting pursuant to instructions from Respondent International, discharged their employee Marion Henry, and have at all times thereafter refused to reinstate said employee because of her membership in and activities on behalf of Office Union, because of her activities in opposition to Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, a labor organization within the meaning of Section 2(5) of the Act, hereinafter called Local 223, because of her having engaged in concerted activities

within the meaning of Section 7 of the Act, and because of her honoring a subpena of the Board requiring her to testify at a hearing being conducted in Case No. 36-CA-410 on July 21, 1954, wherein Local 223 was named as a dominated union.

IX.

On or about August 16, 1954, Respondents Security Office and Earhart, acting pursuant to instructions from Respondent International, discharged their employee Mary Ermence, and have at all times thereafter refused to reinstate said employee because of her activities on behalf of Office Union, because of her activities in opposition to Local 223 and because she had indicated she would honor a subpena of the Board requiring her to testify at the hearing in Case No. 36-CA-410 and would not perjure herself as requested by Respondents International and Sweeney.

X.

By all the acts of Respondents International and Sweeney, as set forth and described in paragraphs VII, VIII and IX above, and by each of said acts, Respondents International and Sweeney have interfered with, restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts, and by each of them, Respondents International and Sweeney have engaged in, and are now engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

XI.

By all the acts of Respondents Security Office and Earhart, as set forth and described in paragraphs VIII and IX above, and by each of said acts, Respondents Security Office and Earhart have interfered with, restrained, and

coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts, and by each of them, Respondents Security Office and Earhart have engaged in, and are now engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

XII.

By the discharge of Marion Henry, as set forth and described in paragraph VIII above, and the discharge of Mary Ermence, as set forth and described in paragraph IX above, Respondents International and Sweeney, and Respondents Security Office and Earhart have discriminated, and now are discriminating against employees in regard to hire or tenure of employment, and thus discouraged and now are discouraging membership in Local 223, and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act; and by the same conduct, the afore-named Respondents have discriminated, and now are discriminating, against employees because they were supporting charges filed under the Act, and because they were about to give truthful testimony under the Act deterimental to said Respondents, and thereby engaged in, and are thereby engaging in unfair labor practices with the meaning of Section 8(a)(4) of the Act; and by the same conduct, the afore-named Respondents have dominated and contributed unlawful support and assistance to Local 223, and thereby engaged in, and are thereby engaging in unfair labor practices within the meaning of Section 8(a)(2) of the Act.

XIII.

The activities of Respondents, as set forth and described in paragraphs VII, VIII and IX above, occurring in connection with the operations of Respondents as described in

paragraphs I and III above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIV.

The activities of the Respondents, as set forth and described in paragraphs VII, VIII and IX above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1)(2)(3) and (4), and Section 2(6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 19th day of August, 1954, issues this Complaint against International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its Agent John J. Sweeney, and Oregon Teamsters' Security Plan Office, and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund, Respondents herein.

PATRICK H. WALKER
Patrick H. Walker,
Acting Regional Director
National Labor Relations Board,
19th Region
407 U. S. Court House,
Seattle 4, Washington

1402

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ITS AGENT, JOHN J. SWEENEY, AND OREGON TEAMSTERS' SECURITY PLAN OFFICE, AND WILLIAM C. EARHART, ADMINISTRATOR THEREOF, AND OF TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL NO. 11

ANSWER

Comes now William C. Earhart, Administrator, and for answer to the Complaint herein, admits, denies and alleges as follows:

I.

Answering Paragraph I, Respondent admits that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization, that it has issued charters to affiliated local unions, that its local unions have members, that said International has officers. As to the other matters contained in said Paragraph, Respondent alleges it has not sufficient knowledge or information to form a belief as to the truth or falsity of said allegations and, therefore, denies each and every one of them.

II.

Answering Paragraph II, Respondent alleges that it does not have knowledge sufficient to form a belief as to the truth or falsity of the matters contained therein and, therefore, denies each and every allegation in said Paragraph.

III.

Answering Paragraph III, Respondent admits that as

Administrator he maintains an office in Portland, Oregon, designated the Oregon Teamsters' Security Plan Office, that said office was established pursuant to the terms of trust agreements entered into between employers having labor contracts with local unions chartered by Respondent International, that he employs a complement of seven to ten office clerical empoyees, that as Administrator he maintains a bank account entitled, "Teamsters' Security Administration Fund," that out of said account the expenses of operating the office are paid, that as Administrator he receives funds to pay premiums on insurance policies issued by Occidental Life Insurance Company of California to provide the benefits authorized by said trust agreements, processes said claims, recommends payment thereof, and transmits payments to said claimants. Admits that he collects and pays as premiums to Occidental Life in excess of $2,000,000.00 per year and receives from said Occidental Life an amount in excess of $80,000.00 annually to administer said office. Save and except as expressly admitted herein, Respondent denies each and every allegation contained in said paragraph.

IV.

Answering Paragraph IV, Respondent admits that he is an employer and, as to the remaining allegations contained in said Paragraph, Respondent alleges he does not have sufficient knowledge to form a belief as to the truth or falsity of said allegations and, therefore, denies the same.

V.

Answering Paragraph V, Respondent for himself denies the allegations contained therein and, insofar as they affect other Respondents, alleges he lacks sufficient knowledge

to form a belief as to the truth or falsity of said allegations and, therefore, denies the same.

VI.

Answering Paragraph VI, Respondent denies each and every allegation contained therein.

VII.

Answering Paragraph VII, Respondent alleges he has not sufficient information to form a belief as to the truth or falsity of said allegations and, therefore, denies the same.

VIII.

Answering Paragraph VIII, Respondent admits he discharged Mary Ermence. Save and except as admitted herein, Respondent denies each and every allegation contained in said Paragraph.

IX.

Answering Paragraph IX, Respondent admits he discharged Mary Ermence. Save and except as admitted herein, Respondent denies each and every allegation contained in said Paragraph.

X.

Answering Paragraph X, Respondent alleges that he lacks knowledge sufficient to form a belief as to the truth or falsity of the matters contained therein and, therefore, denies each and every allegation contained in said Paragraph.

XI.

Answering Paragraph XI, Respondent denies each and every allegation contained therein.

XII.

Answering Paragraph XII, Respondent denies each and every allegation contained therein.

1405

XIII.

Answering Paragraph XIII, Respondent denies each and every allegation contained therein.

XIV.

Answering Paragraph XIV, Respondent denies each and every allegation contained therein.

Respondent alleges that he has committed no unfair labor practice as defined by the Act and that the Board has not or should not assert jurisdiction over Respondent's activities and the assumption of jurisdiction will not effectuate the purposes of the Act.

Respondent also objects to the consolidation of Case No. 36-CA-648 with the other cases and moves for an order that Case No. 36-CA-648 be severed from the other cases.

RICHARD R. MORRIS
Attorney for Respondent
618 Failing Building
Portand 4, Oregon

STATE OF OREGON
COUNTY OF MULTNOMAH } ss.

I, WILLIAM C. EARHART, being first duly sworn, say that I am the Administrator in the within-entitled cause and that the foregoing Answer is true as I verily believe.

WILLIAM C. EARHART

SUBSCRIBED and sworn to before me this 31st day of August,

LILLIAN R. BRICE
Notary Public for the State of Oregon
My Commission Expires: May 4, 1956

1406

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and TEAMSTERS BUILDING ASSOCIATION, INC.

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS,

and

WAREHOUSEMEN LOCAL No. 206, Affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11.

ANSWER

Comes now TEAMSTERS BUILDING ASSOCIATION, INC. and in answer to the complaint herein, admits, denies, and alleges as follows:

I.

Admits all Paragraph I except this respondent does not have sufficient knowledge upon which to form a belief as to the exact amount of annual revenue derived by the International from Local unions, or the exact number of affiliated local unions, and therefore denies the same.

II.

Answering Paragraph II, Respondent admits that Local No. 223 is a labor organization with its principal office in

Portland, Oregon and is chartered by the International, and that it represents its members in their collective bargaining relationship in and around Portland, Oregon but has no information upon which to form a belief as to the balance of Paragraph II and therefore denies the same.

III.

Admits Paragraph III except in this connection alleges that there are ten local unions in the said building. With reference to the Oregon Teamsters Security Plan office and the number of members covered in the States of Washington, Idaho, and Montana, this respondent has no information upon which to form a belief and therefore denies the same.

IV.

Answering Paragraph IV, admits that Local No. 206 is a labor organization with its principal office in Portland, Oregon, and is chartered by the International, and that it represents its members in their collective bargaining relationships in and around Portland, but has no information upon which to form a belief as to the balance of Paragraph IV and therefore denies the same.

V.

Denies Paragraphs V and VI.

VI.

Admits Paragraph VII.

VII.

Respondent does not have sufficient knowledge or belief as to the truth or falsity of the matters contained in Paragraphs VIII, X, XI, XIII, XIV, and therefore denies each and every allegation.

VIII.

Denies Paragraphs IX, XII, XV, and XVI.

IX.

Respondent Teamsters Building Association, Inc. specifically denies that it has committed any unfair labor practice as alleged in the complaint, and specifically denies that it is an employer engaged in commerce within the meaning of Section 2, sub-paragraphs (6) and (7) of the Act, and further states that if it is engaged in commerce, it would not effectuate the purposes of the Act for the Board to take jurisdiction.

1408

WHEREFORE, respondent Teamsters Building Association, Inc. having fully answered the complaint on file herein, prays that the same be dismissed.

ANDERSON, FRANKLIN & LANDYE
By /s/ JAMES LANDYE
Attorneys for Respondent
Teamsters Building Association, Inc.

STATE OF OREGON,
COUNTY OF MULTNOMAH } ss.

I, CLYDE C. CROSBY, being first duly sworn, say that I am the President of Respondent, Teamsters Building Association, Inc., in the within entitled cause, and that the foregoing Answer is true as I verily believe.

CLYDE C. CROSBY
Teamsters Building
Portland, Oregon

Subscribed and sworn to before me this 8th day of September, 1954.

Notary Public for Oregon
My Commission expires: 9/30/55
JEWELL SLATER

1409

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-639

OREGON TEAMSTERS' SECURITY PLAN OFFICE; and
WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
and
OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

Comes now WAREHOUSEMEN'S LOCAL NO. 206, and in answer to the complaint herein, admits, denies, and alleges as follows:

I.

Admits Paragraph I except this respondent does not have sufficient knowledge upon which to form a belief as to the exact amount of annual revenue derived by the International from local unions, or the exact number of affiliated local unions, and therefore denies the same.

II.

Respondent does not have sufficient knowledge or belief as to the truth or falsity of the matters contained in Paragraph II and therefore denies each and every allegation.

III.

Admits Paragraph III except that it does not have sufficient knowledge to form a belief as to the number of members covered by the Oregon Teamsters Security Plan in the States of Washington, Idaho, and Montana, and therefore denies the same.

IV.

Answering Paragraph IV, respondent denies each and every allegation in Paragraph IV except as hereinafter specifically admitted. Respondent admits that Warehousemen Local No. 206 maintains its principal office at Portland, Oregon, and that it is, and has been a labor organization

within the meaning of Section 2(5) of the Act, that it is chartered by the Teamsters International and operates in accordance with the Teamsters International Constitution and to that extent is subject to the control of the Teamsters International. It further admits that it is engaged primarily in representing its members, consisting of warehouse and other employees, in their collective bargaining relationships with numerous companies which operate in and around Portland, and further admits that in its operation it has had two office clerical employees in its employ. Insofar as the allegations contained in this paragraph allege that the employers with which Local 206 has had collective bargaining agreements are engaged in commerce within the meaning of Section 2(6) and (7) of the Act and the amount of dollar volume in connection therewith, this respondent has no knowledge with which to form a belief and therefore denies the same.

V.

Respondents deny Paragraphs V and VI.

VI.

Admit Paragraph VII.

VII.

Respondent does not have sufficient knowledge or belief as to the truth or falsity of the matters contained in Paragraph VIII and therefore denies the same.

VIII.

Denies Paragraphs IX, X, XI, XII, XIII, XIV, XV, and XVI.

IX.

Respondent WAREHOUSEMEN LOCAL NO. 206 specifically denies that it has committed any unfair labor practice as alleged in the complaint, and specifically denies that it is an employer engaged in commeree within the meaning of Section 2, sub-paragraphs (6) and (7) of the Act, and further states that if it is engaged in commerce, it would not effectuate the purposes of the Act for the Board to take jurisdiction.

1411

WHEREFORE, respondent WAREHOUSEMEN LOCAL NO. 206 having fully answered the complaint on file herein, prays that the same be dismissed.

ANDERSON, FRANKLIN & LANDYE
JAMES LANDYE
Attorneys for Respondent
Warehousemen Local No. 206

STATE OF OREGON,
COUNTY OF MULTNOMAH } ss.

I, JACK ESTABROOK, being first duly sworn, say that I am the Secretary of Respondent WAREHOUSEMEN LOCAL NO. 206 in the within entitled cause and that the foregoing Answer is true, as I verily believe.

JACK ESTABROOK
Teamsters Building
Portland, Oregon

Subscribed and sworn to before me this 8th day of September, 1954.

JEWELL SLATER
Notary Public for Oregon
My Commission expires: 9/30/55

1412

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and JOINT COUNCIL OF DRIVERS, No. 37

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

ANSWER

Comes now JOINT COUNCIL OF DRIVERS, NO. 37, and in answer to the complaint herein, admits, denies, and alleges as follows:

I.

Admits Paragraph I except as to the exact amount of revenue derived by the International from the local unions. Respondent does not have sufficient information as to this and therefore denies the same.

II.

Answering Paragraph II, Respondent admits that it is a labor organization within the meaning of Section 2(5) of the Act; admits that certain local Teamsters Unions within the states of Oregon and Washington are affiliated with the Joint Council, and admits that it has a principal office in Portland, Oregon. Admits that it is formed pursuant to the Constitution of the International Union; that its income is derived from dues paid by the local unions affiliated with it; that it has at least one office clerical employee in its employ. Respondent denies each and every other allegation contained therein.

III.

Respondent denies Paragraphs III, IV, V, VI, VII, VIII, and IX.

1413

IV.

Respondent Joint Council of Drivers No. 37, specifically denies that it has committed any unfair labor practice as alleged in the complaint, and specifically denies that it is an employer engaged in commerce within the meaning of Section 2, sub-paragraphs (6) and (7) of the Act, and further states that if it is engaged in commerce, it would not effectuate the purposes of the Act for the Board to take jurisdiction.

WHEREFORE, respondent JOINT COUNCIL OF DRIVERS NO. 37, having fully answered the complaint on file herein, prays that the same be dismissed.

ANDERSON, FRANKLIN & LANDYE
JAMES LANDYE
Attorneys for Respondent
Joint Council of Drivers No. 37

STATE OF OREGON,
COUNTY OF MULTNOMAH } ss.

I, JACK ESTABROOK, being first duly sworn, say that I am the Vice President of Respondent, Joint Council of Drivers No. 37, in the within entitled cause and that the foregoing Answer is true as I verily believe.

JACK ESTABROOK
Teamsters Building
Portland, Oregon

Subscribed and sworn to before me this 8th day of September, 1954.

JEWELL SLATER
Notary Public for Oregon
My Commission expires: 9/30/55

1414

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AMENDED CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Do Not Write In This Space

Case No. 36-CA-648
Date Filed 8/19/54
Amended 9/13/54
Compliance Status Checked By: /s/ mk

1. Employer Against Whom Charge Is Brought

Name of Employer Please see attached sheet

Address of Establishment (Street and number, city, zone, and State) Int'l—100 Indiana Ave. N. W., Washington, D. C.; Security Plan Off.—1020 N.E. Third Ave., Portland 12, Oregon

Type of Establishment (Factory, mine, wholesaler, etc.) Labor union

Identify principal product or service

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (2) (3) (4) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above-named employers, by their officers, agents or representatives, on or about August 13, 1954, discharged employee Marion Henry and on or about August 16, 1954, discharged employee Mary Ermence because of their membership in and activities on behalf of Office Employes' International Union, Local No. 11; because of their refusal to support Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; because of their having engaged in concerted activities within the meaning of Section 7 of the Act; because they had announced they would honor subpoenas of the Board requiring them to testify at a hearing being conducted in Case No. 36-CA-410 wherein Local No. 223 was named as a dominated union and would testify truthfully therein.

The above-named International and John J. Sweeney prior to the hearing in Case No. 36-CA-410 further attempted to dissuade employees from honoring Board subpoenas and from testifying in the aforementioned Board hearing and attempted to induce prospective witnesses to commit perjury.

The above-named Security Office and Earhart, on or about August 23, 1954, and at all times since, refused to recognize and bargain with the above-named Local No. 11 as the collective bargaining representative of their non-supervisory employees.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge Office Employes International Union, Local No. 11

4. Address (Street and number, city, zone, and State) 1008 S. W. Sixth Avenue, Portland, Oregon

Telephone No. BEacon 5900

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit

(To be filled in when charge is filed by a labor organization)
Office Employes International Union

6. Address of National or International, if any (Street and number, city, zone, and State) 707 Continental Building, 1012 - 14th Street, Washington 5, D. C.
Telephone No. Ex 3-4464

7. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ JAMES N. BEYER
Secretary-Treasurer

Date September 13, 1954

Willfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80)

1415

NAME OF EMPLOYER: (From previous page)

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, AFL, and its agent, John J. Sweeney, and Oregon Teamster Security Plan Office and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund.

1416

IX A.

The following unit is now and, at all times hereinafter alleged, was an appropriate unit within the meaning of Section 9 (b) of the Act:

> All office and clerical employees in the Teamster Security Plan Office, Portland, Oregon, administered by William C. Earhart, excluding supervisors as defined in the Act.

IX B.

Office Union is now and, at all times since on or about July 14, 1954, has been the collective bargaining representative of a majority of Respondents Security Office and Earhart's employees in the unit described in paragraph IX A, above, and by virtue of Section 9 (a) of the Act, has been and now is the exclusive representative of all employees of Respondents Security Office and Earhart in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

IX C.

On or about July 27, 1954, Office Union notified Respondents Security Office and Earhart of its claim to represent a majority of their employees and requested that said Respondents bargain with it. On or about August 10, 1954, Office Union filed with the Board a petition for certification as the collective bargaining representative of the employees in the unit described in paragraph IX A, above. On or about August 18, 1954, Office Union demanded recognition of Respondents Security Office and Earhart in the unit described in paragraph IX A, above, and offered to submit documented proof that it represented a majority of the employees in said unit, whereupon Respondents Security Office and Earhart on or about August 23, 1954, declined to recognize Office Union until it was certified by the Board.

IX D.

By declining to recognize Office Union, as set forth and described in paragraph IX C, above, after having discharged Henry and Ermence, as set forth and described in paragraphs VIII and IX, above, which discharges were after notice of Office Union's representation claim, as set forth and described in paragraph IX C, above, Respondents Security Office and Earhart have refused to bargain in good faith with Office Union as the representative of their

employees in the appropriate unit set forth in paragraph IX A, above, and thereby have engaged in, and are now engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ITS LOCAL NO. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL NO. 206, Affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL NO. 11

ANSWER OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

LOCAL NO. 223

Answering the Amended Consolidated Complaint herein, Respondents International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers of America, and Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, admit, deny and allege as follows:

I.

Answering Paragraph I, they admit that the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter called Respondent International, maintains its principal office in Washington, D. C.; that at all times referred to in the Consolidated Complaint it has been a labor organization within the meaning of the Act; and deny all other allegations of said Paragraph.

1419

II.

Answering Paragraph II, Respondents admit all allegations thereof except that many of the companies with which Local No. 223 has collective bargaining agreements are engaged in commerce within the meaning of the Act, all of which allegations concerning this matter Respondents deny.

III.

Answering Paragraph IV, these Respondents admit all allegations thereof except that Warehousemen's Local No. 206 is subject to the control of Respondent International; and except that many of the companies with which said Local has collective bargaining relationships are engaged in commerce within the meaning of the Act which allegations these Respondents deny.

IV.

They deny each and every allegation of Paragraphs V and VI.

V.

They deny each and every allegation of Paragraphs VIII, IX.

VI.

Answering Paragraph X, they deny any knowledge or information sufficient to form a belief concerning the same.

VII.

They deny each and every allegation of Paragraphs XI, XII, and XIII.

VIII.

Answering Paragraphs XIV, these Respondents deny any knewledge or information sufficient to form a belief concerning the same.

IX.

They deny each and every allegation of Paragraphs XV and XVI.

1420

WHEREFORE having fully answered the Consolidated Complaint herein, these Respondents ask that the same be dismissed as to them and each of them.

SAMUEL B. BASSETT
Samuel B. Bassett
Attorney for the Respondents

STATE OF OREGON
COUNTY OF MULTNOMAH } ss.

JOHN J. SWEENEY, being first duly sworn on oath, deposes and says that he is one of the Respondents above-named and the Trustee of Local No. 223; that he has read

the foregoing Answer; knows the contents thereof, and believes the same to be true.

JOHN J. SWEENEY

SUBSCRIBED and sworn to before me this 17th day of September, 1954.

JEWELL SLATER
Notary Public for the State of Oregon
My Commission Expires: 9/30/55

1421

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND JOINT COUNSEL OF DRIVERS, No. 37
and
OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL NO. 11

ANSWER OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Answering the Complaint herein, Respondent International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America admits, denies and alleges as follows:

I.

Answering Paragraph I, this Respondent admits that it maintains its principal office in Washington, D. C.; that it at times referred to in the Complaint has been a labor organization within the meaning of the Act; and denies all other allegations of said Paragraph.

II.

Answering Paragraph II, it admits all allegations thereof except that Joint Council of Drivers, No. 37 was or is subject to the control of this Respondent, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which allegation it denies.

III.

Answering Paragraph IV, this Respondent denies each and every allegation thereof.

IV.

This Respondent denies each and every allegation of Paragraphs VI, VII, VIII, and IX.

WHEREFORE having fully answered the Complaint herein, this Respondent asks that the same be dismissed as to it.

SAMUEL B. BASSETT
Samuel B. Bassett
Attorney for the Respondent

1422

STATE OF OREGON
COUNTY OF MULTNOMAH } ss.

JOHN J. SWEENEY, being first duly sworn on oath, deposes and says that during all of the times referred to in the Complaint herein he was Trustee of Teamsters Local No. 223 and General Organizer appointed by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; that he is authorized to make this verification for and on behalf of said International Union; and that he has read the foregoing Answer,

knows the contents thereof, and believes the same to be true.

JOHN J. SWEENEY

SUBSCRIBED and sworn to before me this 17th day of September, 1954.

JEWELL SLATER
Notary Public for the State of Oregon
My Commission Expires: 9/30/55

1423

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Nineteenth Region

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, AND ITS AGENT, JOHN J. SWEENEY, AND OREGON TEAMSTERS' SECURITY PLAN OFFICE, AND WILLIAM C. EARHART, ADMINISTRATOR THEREOF, AND OF TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL NO. 11

ANSWER OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

JOHN J. SWEENEY

Answering the Complaint herein, Respondents International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and John J. Sweeney, admit, deny and allege as follows:

I.

Answering Paragraph I, they admit that the International Brotherhood of Teamsters, Chauffeurs, Warehouse-

men and Helpers of America, hereinafter called Respondent International, maintains its principal office in Washington, D. C.; that at all times referred to in the Complaint it has been a labor organization within the meaning of the Act; and deny all other allegations of said Paragraph.

II.

Answering Paragraph II, they admit that at all times mentioned in the Complaint Respondent John J. Sweeney has been a paid representative of Respondent International and deny all of the allegations of said paragraph.

III.

Answering Paragraph III, they admit the first paragraph thereof and deny any knowledge or information sufficient to form a belief concerning the allegations of the second paragraph thereof.

IV.

Answering Paragraph IV, they admit that Respondent International, at all times mentioned in the Complaint, was an employer and they deny all of the allegations of said Paragraph.

1424

V

They deny each and every allegation of Paragraph V.

VI.

Answering Paragraph VI, they deny any knowledge or information sufficient to form a belief concerning the allegations thereof.

VII.

They deny each and every allegation of Paragraphs VII,

VIII, IX, IX-A, IX-B, IX-C, IX-D, X, XI, XII, XIII, and XIV.

WHEREFORE having fully answered the Complaint, these Respondents ask that the same be dismissed as to them and each of them.

SAMUEL B. BASSETT
Samuel B. Bassett
Attorney for the Respondents

STATE OF OREGON
COUNTY OF MULTNOMAH } ss.

I, JOHN J. SWEENEY, being first duly sworn, depose and say that I, as one of the above-named Respondents, have read the foregoing Answer, know the contents thereof, and believe the same to be true.

JOHN J. SWEENEY

SUBSCRIBED and sworn to before me this 17th day of September, 1954.

JEWELL SLATER
Notary Public for the State of Oregon
My Commission Expires: 9/30/55

1662

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and WILLIAM C. EARHART, Administrator thereof, and of TEAMSTERS SECURITY ADMINISTRATION FUND; and WAREHOUSEMEN LOCAL No. 206, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Case No. 36-CA-637

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and TEAMSTERS BUILDING ASSOCIATION, INC.

Case No. 36-CA-638

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS

Case No. 36-CA-639

and

WAREHOUSEMEN LOCAL No. 206, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

Case No. 36-CA-647

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and JOINT COUNCIL OF DRIVERS, No. 37

Case No. 36-CA-648

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its AGENT, JOHN J. SWEENEY, and OREGON TEAMSTERS' SECURITY PLAN OFFICE, and WILLIAM C. EARHART, ADMINISTRATOR THEREOF, and of TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

1663

Robert E. Tillman, for the General Counsel.

Bailey & Lezak, by *Paul T. Bailey,* of Portland, Oreg., for the charging party.

Bassett, Geissness and Vance, by *Samuel Bassett,* of Seattle, Wash., for Respondents International, Sweeney, and Local 223.

Richard R. Morris, of Portland, Oreg., for Security Fund and Earhart.

Anderson, Franklin and Landye, by *James Landye,* of Portland, Oreg., for the other Respondents.

Before: *Martin S. Bennett,* Trial Examiner.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

This proceeding is brought under Section 10 (b) of the National Labor Relations Act, 61 Stat. 136, and is based upon separate charges duly filed by Office Employes International Union, Local No. 11, herein called Local 11, against the various Respondents named above in the respective cases.

Pursuant to said charges, the General Counsel of the National Labor Relations Board issued six complaints

against the respective Respondents. The original complaint, dated June 25, 1954, in Case 36-CA-410, as amended, alleged that on or after March 1, 1953, Respondent Teamsters Security Administration Fund, also known as Oregon Teamsters' Security Plan Office, and William C. Earhart, administrator thereof, herein referred to as Security Fund and Earhart, individually and jointly with Warehousemen Local No. 206, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 206 and the International respectively, had dominated, assisted, and contributed support to Local 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, affiliated with said International, within the meaning of Section 8 (a) (1) and (2) of the Act.[1]

Subsequent to the initial hearings on the above-described complaint, held on July 21 and 22, 1954, and discussed below, the General Counsel, relying upon interim developments, issued a group of additional complaints. These

included a consolidated complaint dated August 13, 1954, in Cases 36-CA-637, 638, and 639, against four Respondents, the International, Local 206, Local 223, and Teamsters Building Association, Inc., herein called Building Association. That complaint, as amended, alleged (1) that Local 206 on or about June 10, 1954, discriminatorily terminated the employment of June Cook because of her activities in behalf of Local 11, within the meaning of Section 8 (a) (1) and (3) of the Act; (2) that Building Association dis-

[1] As will appear below, these complaints deal *inter alia* with the office employees of the various labor organizations identified as Respondents herein; these labor organizations are named as Respondents in their capacities as employers under Section 2 (2) of the Act. While that section excludes a labor organization from the definition of an employer under the Act, an exception to the exclusion provides that a labor organization is deemed to be an employer "when acting as an employer." Such is the case here. *Air Line Pilots Association*, 97 NLRB 929, 930, and *Raybestos-Manhattan, Inc.*, 80 NLRB 1208.

charged Irene Morcom [2] and Virginia Olstad on or about July 28 and 29, 1954, respectively, at the behest of Respondent International, because of their activities in behalf of Local 11 and because they honored Board subpoenas requiring their presence and testimony at the hearing in Case 36-CA-410 on July 21, 1954, within the meaning of Section 8 (a) (1), (3), and (4) of the Act; (3) that Local 223, as an employer, had interfered with the activities of its own employees and had dominated and contributed unlawful support to itself in its other capacity as a labor organization, within the meaning of Section 8 (a) (1) and (2) of the Act; and (4) that Respondent International, by its role in the foregoing activity, engaged in conduct violative of Section 8 (a) (1), (2) (3), and (4) of the Act.

The complaint in Case 36-CA-647, was issued on August 17, 1954, and alleged that Joint Council of Drivers, No. 37, herein called Joint Council, an organization formed pursuant to the Constitution of Respondent International, had together with Respondent International, discharged the above-named Irene Barnes on or about August 13, 1954, because of her activity in behalf of Local 11 and because she honored a Board subpoena requiring her appearance and testimony in Case 36-CA-410 on July 21, 1954, thereby engaging in conduct violative of Section 8 (a) (1), (2), (3), and (4) of the Act.

Another complaint, in Case 36-CA-648, issued on August 19, 1954, and named as Respondents the International and its agent, John J. Sweeney, together with Security Fund and its administrator, William C. Earhart. That complaint, as amended, alleged (1) that Respondent International and Respondent Sweeney in July 1954 attempted to dissuade employees from honoring Board subpoenas in Case 36-CA-410, to withhold information from the Board when testifying, and to perjure themselves, within the meaning of Sec-

[2] Morcom has since married and appears in the transcripts as Irene Morcom Barnes. She is so referred to herein.

tion 8 (a) (1) of the Act; (2) that employees Marian Henry and Mary Ermence were discharged by Security Fund on August 13 and August 16, 1954, respectively, pursuant to instructions from Respondent International, within the meaning of Section 8 (a) (1), (2), (3), and (4) of the Act; and (3) that Security Fund and Earhart had refused to bargain collectively with Local 11 as the representative of its employees in an appropriate unit, within the meaning of Section 8 (a) (5) of the Act.

On August 19, 1954, the Regional Director for the Nineteenth Region issued an order consolidating all of the above-entitled cases in order to effectuate the purposes of the Act and to avoid unnecessary costs or delay. Copies of the various charges, complaints, orders consolidating cases and notice of hearing thereon were duly served upon the various Respondents who thereafter filed answers denying the commission of any unfair labor practices.

Pursuant to notice a hearing was held at Portland, Oregon, on July 21 and 22, 1954, and between September 13 and 21, 1954, before the undersigned Trial Examiner,

Martin S. Bennett, duly designated by the Associate Chief Trial Examiner. All parties were represented; participated in the hearing; and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce relevant evidence. Motions were filed by Respondents to sever the cases and were denied. *N. L. R. B.* v. *Seamprufe, Inc.,* 186 F. 2d 671 (C. A. 10), cert. denied 342 U. S. 813; *United Mine Workers, District 51,* 95 NLRB 547, 548, enf'd 198 F. 2d 389 (C. A. 4), cert. denied 344 U. S. 884; *Broadway Express, Inc.,* 108 NLRB No. 123; and *International Typographical Union* 87 NLRB 1418. Ruling was reserved on a motion by counsel for Respondent Locals to dismiss the complaints and it is hereby denied. At the close of the hearing the parties were given an opportunity

to argue orally and to file briefs. Oral argument was waived. The time for filing briefs was extended at the request of counsel for Respondents who, together with the General Counsel and Local 11 have submitted briefs. Motions to dismiss the complaints filed by certain of Respondents, on the ground that they are not engaged in commerce, are disposed of hereinafter.

The charging party has submitted a number of proposed conclusions. As to those relating to Cases 36-CA-637, 638, 639, and 647, Numbers 1, 3, and 8 are accepted; the remainder are rejected as being completely or partly unacceptable. As to those relating to Cases 36-CA-410 and 648, Numbers 1, 2, 3, 4, 9, and 10 are accepted; the remainder are rejected as being completely or partly unacceptable.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. The Business of Respondents

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a national labor organization which maintains its principal office in Washington, D. C., and has 872 chartered locals in the United States, Alaska, Hawaii, Canada, and the Canal Zone. The International and its locals have a membership, as of July 31, 1954, of 1,204,477 members. It has in its employ, outside of Washington, D. C., 34 officers, representatives and organizers; this figure includes John J. Sweeney who was a general organizer for the International between February 1, 1953, and September 1, 1954, the period material herein, was therefore its agent, and who reported directly to a vice-president of the International; on September 1, 1954, Sweeney became Secretary-Treasurer and Director of the Western Conference of Teamsters, a division of the International. In the year ending December 31, 1953, the

International had a total revenue of $6,587,327 of which $5,755,232 represented remittances to its principal offices in Washington, D. C., from all of its locals of the per capita tax levied upon each member; also included in the larger figure was the sum of $626,425 which represented a percentage of the initiation fee levied upon new members and remitted to the International offices in Washington, D. C., by the respective locals.[3]

1666

Local 206, affiliated with the International, has a membership of approximately 2,750; had receipts from dues, reinstatement and application fees, and fines during the year ending June 30, 1954, totaling $156,839; and remitted per capita taxes in the amount of $46,786. Local 223, affiliated with the International, has a membership of approximately 600; had receipts from the same sources during the year ending June 30, 1954, of $32,468; and remitted per capita taxes in the amount of $7,258.

Joint Council of Drivers, No. 37, is comprised of 23 Teamster locals, 21 in the State of Oregon, and 2 in the State of Washington, and is established pursuant to Article XV of the Constitution of the International which makes the formation of a joint council mandatory under certain specified circumstances. It has no by-laws of its own and operates under the constitution of the International. Its income in the year ending June 30, 1954, totaled $177,645 based upon per capita taxes paid by its constituent locals, of which $8,609 represented taxes from locals in the State of Washington.

Teamsters Building Association, Inc., an Oregon corporation, was incorporated in 1948 and all of its stock is

---

[3] On the assumption that these totals include remittances to the International from those locals that may be located in the District of Columbia, the foregoing figures, insofar as they represent sums of money passing across State lines, should be reduced accordingly; it is apparent that such a reduction would be relatively slight and would not affect the conclusions that follow.

owned by six Teamster locals, including Respondent Local 206. It was formed as a device to get around certain restrictions on the owning of real estate by labor organizations; this device, utilizing a nonprofit corporation for such a purpose, is now permitted under Oregon law, in contrast to a prior flat ban on the owning of real estate. Its only function is to own and operate one office building in Portland, Oregon, known as the Teamsters Building, all of whose tenants, with one exception discussed below, are Teamster locals. Income of the corporation is derived almost entirely from the rent of building space to its tenants and, during the year ending June 30, 1954, this rental income totaled $49,767. While desk if not office space, is provided for an International representative, the record does not disclose whether this service is paid for by the International. Building Association does not maintain a separate office of its own; its business affairs are conducted from the office of Joint Council 37 whose Recording Secretary, Clyde C. Crosby, was also President of the Association. The records of the Association are maintained partly in the Joint Council office and partly in the office of Teamsters Local 162; Crosby, at the time material herein, was also General Secretary-Treasurer of the latter organization which is not involved in this proceeding.

Teamsters Security Administration Fund is an entity whose administrator and managing agent is William C. Earhart. The fund is established as the result of collective bargaining agreements between the 23 Locals belonging to the Joint Council and approximately 2,000 employers located primarily in the State of Oregon, but including a small number in the surrounding States of Washington, Idaho, and Montana. These agreements provide for the establishment of health and welfare plans pursuant to Section 302 of the Act, and cover some 16,000 employees. The actual operating technique consists of a trust provided for in the collective bargaining agreement with trustees appointed, presumably in equal numbers by both parties to

the collective bargaining agreements. There are in all 18 such trust agreements behind Security Fund. All the trust agreements provide for the appointment of an administrator and Earhart, appointed to that post on April 1, 1954, administers all these trusts. He was the first full-time administrator, his predecessors since July 1950, the date of inception of the Fund, having been various Teamster officials who devoted a portion of their time to the post, apparently on a nonremunerative basis. Earhart's primary function is to operate an office known as the Teamsters Security Administration Fund which is indirectly financed, as follows, through funds paid into the respective trusts.

1667

Each of these trusts has purchased a health and welfare insurance policy for the employees it covers with the Occidental Life Insurance Company in Los Angeles, California. Contributions from the approximately 2,000 employers in the four States are sent to the administrator of the trusts, Earhart. The insurance premiums are substantially equal to the total contributions and are remitted monthly by Earhart, for the trusts, to the insurance company in Los Angeles. That company in turn remits four percent of the premiums to Teamsters Security Administration Fund for the sole purpose of maintaining an office in Portland and processing and paying claims under the health and welfare plans by drafts on Occidental. For the first 4 years of its operation, ending July 1, 1954, receipts of the trusts have averaged in excess of $1,000,000 per annum. Premiums remitted to the insurance company for the month of June 1954 totalled $178,266; in other words, premiums in excess of $2,000,000 per annum are currently being remitted to the insurance company. An insurance company allowance to the Fund af four percent to operate the claims office is based upon the latter figure and is forwarded to the Fund by separate check from the Los Angeles office of Occidental.

Security Fund also does business, apparently for the sake of convenience, under the name of Oregon Teamsters' Security Plan Office; this name appears on its office door and on its letterhead. The Fund which exists for no purpose other than that stated above, rents and maintains offices in the building owned and operated by Teamsters Building Association in Portland, known as the Teamster building. As stated, all other tenants of that building are local unions or other divisions of the Teamster organization.

Conclusions

In considering the problem whether the various Respondents herein are engaged in commerce. I have been able to discover but one case where the Board exercised jurisdiction over a labor organization as an employer. *Air Line Pilots Association, supra.* That was a representation proceeding involving the employees of a labor organization which maintained offices in several cities throughout the United States. The Board found that "Congress intended that labor unions be treated like any other employer with regard to their own employees," and pointed out that "the Board normally assumes jurisdiction over enterprises which are multi-state in character . . . ."

The Board has recently revised its jurisdictional policies in a number of respects. While it is understandable, due to the paucity of such cases, that express standards have not been set up specifying the circumstances under which jurisdiction will be asserted over a labor organization as an employer, I believe that if jurisdiction is to be asserted herein, it must be done upon the basis of fitting the facts, as they apply to the various Respondents, into one of the formulae spelled out by the Board in its recent decisions. As will be apparent, those referred to in the case of *Jonesboro Grain Drying Cooperative,* 110 NLRB No. 67, are germane herein. The Board there promulgated, *inter alia,* these standards:

(a) That it would assert jurisdiction over an enterprise receiving goods or materials from out-of-State valued at $500,000 or more per annum.

(b) That it would assert jurisdiction over an enterprise producing or handling goods and shipping such goods out-of-State, or performing services outside the State in which the enterprise is located, valued at $50,000 or more per annum.

(c) That it would assert jurisdiction over an enterprise other than retail which is operated as an integral part of a multistate enterprise, and (1) the particular establishment meets any of the foregoing as well as other standards set forth in the *Jonesboro* decision; or (2) the direct outflow of the entire enterprise amounts to $250,000 or more per annum; or (3) the indirect outflow of the entire enterprise amounts to $1,000,000 or more per annum.

Turning first to Respondent International, the record demonstrates that it maintains 872 locals in the United States, Alaska, Hawaii, Canada, and the Canal Zone. Its 1953 revenues, based upon per capita taxes and initiation fees received from its constituent locals, were in excess of $6,000,000 and were forwarded by these locals to the International in Washington, D. C. As for the relationship between the International and its constituent locals, the provisions of the International Constitution demonstrates that the International and its locals constitute one integrated, closely-knit, and national organization, which is well within the logical meaning of the term "multistate enterprise," as used by the Board. These provisions are corroborated by the By-Laws of Local 206. It is also noteworthy that Local No. 223, under trusteeship, has no constitution or by-laws and that it operates under the International Constitution. Some of the provisions of the International Constitution are listed below:

(1) The General President of the International may appoint a temporary trustee "to take charge and control" the affairs of a local union whose affairs are not being conducted in accordance with the Constitution of the International.

(2) Said trustee is authorized to take full charge of the affairs of the local, to remove officers, and to appoint temporary officers during his trusteeship. As demonstrated in the present case, the power to appoint trustees is in fact exercised by the International, and a trustee, although described in the Constitution as "temporary," may enjoy a trusteeship lasting for a number of years. His duties, moreover, are to see that the Local functions under the International Constitution.

(3) Officers of a local suspended by a trustee are directed by the Constitution to turn over all funds, books, and property of the local to the trustee who, in turn, is directed to take possession of same.

(4) Said trusteeship does not come to an end until the General President of the International so directs.

(5) Charters are issued to local unions only upon the signing of a contract providing that upon revocation of the charter, "all books, documents, contracts, name, moneys, funds, and property shall belong to and shall be delivered over to the International union. . . ."

(6) Charters to locals may be revoked by the General President of the International when deemed necessary.

(7) Upon revocation or forfeiture of the charter of a local union, and upon its subsequent reorganization, the General Executive Board of the International has the power to exclude from membership in the new local persons responsible for the revocation or forfeiture of the charter.

(8) The General Executive Board has the power to deny membership in the International to applicants to any local union.

(9) The General Secretary-Treasurer shall "notify the local secretary to comply with the laws (of the International) and if he does not, he shall be removed from office for the second offense."

(10) Any local secretary-treasurer or business representative is required to be bonded. Upon his failure to obtain a surety bond satisfactory to the General Secretary-Treasurer of the International, he is automatically deprived of holding any office for which a bond is required. The General President or General Executive Board is empowered to suspend or revoke any local charter for failure to comply with these bonding requirements.

(11) Any organizer or officer of the International may be empowered by the General President or General Secretary-Treasurer of the International to audit the books of any local, and any local union officer refusing to turn over books and records to the delegated officer is subject to expulsion by the General Executive Board.

(12) When a local union secedes, disaffiliates, or dissolves, its records, property, and funds are to be delivered to the General President or his representative. All such property and funds are held in trust by the International until reorganization has been effected, but, if no reorganization is effected within 6 months, all properties and funds of the local become the property of the International.

(13) When a local union is on strike or has been subjected to a lockout, the General President determines whether or not benefits are to be paid as provided in the International constitution.

(14) A local union desiring to present a wage scale to an employer must, after obtaining approval of its joint council, forward a copy of same to the General President and obtain his approval before presenting it to the employer.

(15) No contract entered into between a local union and an employer is binding until it is approved by the General President of the International.

(16) Upon the filing of charges against a member or officer of a local, the General President may, in his discretion, immediately suspend such member or officer from membership or office.

(17) When the General Executive Board determines that a local union shall arbitrate a dispute with an employer, the local is directed to carry out this decision.

(18) Any local union not paying an assessment levied, under indicated circumstances, by the General Executive Board, shall be suspended.

(19) Any local union within the jurisdiction of a joint council is required by the International Constitution to affiliate with said council.

It is common knowledge that the degree of control of an international union over its locals and the extent of local autonomy vary greatly among labor organizations in direct ratio to their constitutional requirements and operating techniques. Under some circumstances, not present herein, it might well be argued that a designated local labor union is an entirely independent entity not completely or substantially subject to the wishes and control of its parent organization.

It is clear, on the other hand, that the provisions of an international constitution may well subject a local to international control of a substantially complete and binding nature. Thus, it is significant in the present case that the International Constitution places the formation of a local, the revocation of its charter, its existence and property, and the very management of its affairs, under the close and controlled supervision of the International, as set forth

above in more detail. See Rose, *Relationship Of The Local Union To The International Organization,* Virginia Law Review, 843-780 (Nov. 1952) and cases cited therein, including *Operating Engineers* v. *Jones Construction Company,* 240 S. W. 2d 49 (Ky.); *Federation* v. *Office and Professional Workers,* 74 A. 2d 446, 449 (R.I.); and *Fitzgerald* v. *Abramson,* 89 F. Supp. 504 (S.D.N.Y.).

If, as is the case here, the International can strip a local of its property and of its right to conduct day to day operations, and even abolish it entirely, it becomes almost meaningless to discuss the separate existence of the local as an entity independent of the International. See *Chicago Typographical Union, et al.,* 86 NLRB 1041, 1045-7. See also *Hickey* v. *Stickel,* N. Y. Sup. Ct., decided Nov. 16, 1954, 35 LRRM 2167; *Low* v. *Harris,* 90 F 2d 783 (C. A. 7); *Brown* v. *Hook,* 79 C.A. 2d 781; *Davis* v. *I.A.T.S.E.,* 60 C. A. 2d 713, 141 P. 2d 486; and *Seslar* v. *Local 901,* (D. C. Ind.), 87 F. Supp. 447, rev'd on other grounds 186 F. 2d 403 (C. A. 7), cert. den. 341 U. S. 940.

I find, in view of all the foregoing factors present in this case that the International and its locals constitute integral parts of a multistate enterprise which falls within the purview of the formula laid down by the Board in the *Jonesboro* decision. Specifically, the direct outflow of the entire enterprise, namely, the movement of over $6,000,000 per annum in funds from all of the locals to the International in Washington, D. C., is well in excess of the $250,000 figure specified in that decision. I further find that the International and all of its locals, including Respondent Locals, are engaged in commerce within the meaning of the Act, and that it would effectuate the purposes of the Act to assert jurisdiction herein. See *Lonsford* v. *Burton,* Oreg. Sup. Ct., decided Feb. 24, 1954, 34 LRRM 2100; *Harker* v. *McKissock,* N. J. Sup. Ct. 81 A. 2d 480; *Fanara, et al.* v. *Teamsters, et al.,* N. Y. Sup. Ct., decided July 28, 1954, 34

LRRM 2714; and *Retail Clerks* v. *Westling*, Wash. Sup. Ct., 247 P. 2d 253.[4]

Turning to the Joint Council, here too the record warrants a finding that it is engaged in commerce within the meaning of the Act and that its operations fall within the Board's new formula on jurisdiction. It is clear from the International Constitution that a joint council is a creature of and an integral part of the multistate Teamster organization. Some of its provisions are as follows:

(1) The formation of joint councils is mandatory where three or more locals are located in one city.

(2) Locals are required to belong to these joint councils and to pay monthly dues to them.

(3) The joint councils adjust all questions of jurisdiction between locals.

(4) Joint councils have authority to approve or disapprove of any strike, lawsuit or similar action contemplated by a local.

(5) Locals desiring to present a wage scale to employers must first submit a copy of same to its joint council.

(6) After local unions within the jurisdiction of a joint council affiliate with it, as directed by the International Constitution, they are directed to comply with the laws of the joint council as well as to obey its orders.

(7) When two local unions have a dispute concerning their jurisdiction, they are required to submit said controversy for determination to the joint council; a party

[4] It becomes unnecessary to determine whether the operations of this multistate enterprise meet any of the other standards set forth in the *Jonesboro* decision. Similarly, although it appears that none of the locals involved herein, when considered separately, meet the direct outflow standards, I deem it unnecessary to treat with this problem in view of the foregoing findings.

aggrieved by the decision of the joint council may appeal to the International General President.

(8) Although not done pursuant to a constitutional provision, it is significant, in the present case, that Joint Council on March 5, 1954, saw fit to appoint International Representative Sweeney "to coordinate the activities of all departments of the Joint Council and its organizers." This actually constituted, as the record demonstrates, an attempt to set up Sweeney as *de facto* Secretary of Joint Council in the place of one Ward Graham, who was substantially relieved of his duties, although not expressly so.

I find, in view of the foregoing, that the Joint Council herein, whose membership is composed solely of Teamster locals throughout the State of Oregon and in five and one-half counties in the State of Washington, constitutes an integral part of the Teamsters multistate enterprise, is engaged in commerce, and that it would effectuate the purposes of the Act to assert jurisdiction over its operations.

Building Association contends that it has no connection with the International, and it is true that there is no specific reference to it as such in the International Constitution. However, as found, all of the stock in Building Association is owned by six Teamster locals which are very specifically, as set forth above, subject to the control of the International. This control, includes the right to appoint trustees over said locals. If, as here, the International may appoint an International representative as a temporary trustee to take charge of and control the affairs of a local union, and, as demonstrated, these trusteeships can and do last for years, it logically follows that by its demonstrated control over the locals, the International can readily exert similar control over the Building Association, which is entirely owned and controlled by said locals. See *Albert Evans, Trustee, et al.*, 110 NLRB No. 122; and *Local No. 600*, 107 NLRB No. 63. Moreover, it is noteworthy in the present case, that Building Association has no office of its own and

conducts its business operations from the office of the Joint Council. I find, therefore, that Building Association is a salient and intrinsic part of the Teamster organization and is engaged in interstate commerce.

I further find that the facts present herein bring the case within the Board's recent pronouncement as to the circumstances under which it will assert jurisdiction over office buildings. In *McKinney Ave. Realty Company (City National Bank)*, 110 NLRB No. 69, the Board held that it would assert jurisdiction over an office building operation only when the employer which owned or leased and which operated the office building was itself otherwise engaged in interstate commerce, and also utilized the building primarily for its own offices. In the present case, the office building is owned by six locals of the Teamster organiza-

tion and is used exclusively, save for Security Fund, for the use of its own offices by Teamster locals which have been found to be engaged in commerce. Indeed, as will appear below, Security Fund, which is engaged in interstate commerce, is the operating mechanism for a number of health and welfare trusts, at least one-half of whose trustees are appointed and controlled by Teamster locals. I find that it would effectuate the purposes of the Act to assert jurisdiction over the operations of Building Association.

Turning to Security Fund, it is readily apparent that at least on one ground, it falls within the purview of the formula laid down in the *Jonesboro* decision. In view of the fact that Security Fund ships in excess of $2,000,000 per annum in funds to California, well in excess of the $50,000 per annum standard, it falls within the formula. I deem it unnecessary to determine whether it meets any of the other standards promulgated by the *Jonesboro* decision. I find, therefore, and totally aside from the fact that

Section 302 of the Act already asserts Federal jurisdiction over such plans, that Security Fund is engaged in commerce and that it would effectuate the purposes of the Act to assert jurisdiction herein. *United Marine Division, ILA* v. *Essex Transportation Co.*,—F. 2d—(C. A. 3) decided 11/3/54; *Polish National Alliance* v. *N. L. R. B.*, 322 U. S. 643, 648; *N. L. R. B.* v. *Phoenix Mutual Life Ins. Co.*, 167 F. 2d 983 (C A 7), cert denied, 335 U. S. 845; *N. L. R. B.* v. *Tri-State Casualty Insurance Co.*, 188 F. 2d 50 (C. A. 10); *Oklahoma State Union, et al.*, 92 NLRB 248; and *Professional & Business Men's Life Insurance Co.*, 108 NLRB No. 29.[5]

II. The Labor Organizations Involved

I find that Local 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, in its capacity as a labor organization, and Office Employes International Union, Local No. 11, are labor organizations admitting to membership the employees of Respondents.

III. The Unfair Labor Practices

A. *Introduction and background*

This proceeding originally involved one relatively simple complaint in Case 36-CA-410. That complaint contained allegations of unlawful assistance and domination of a labor organization by Security Fund and Local 206, in 1953. Hearings were duly held in the matter on July 21 and 22, 1954, and were duly recessed to August 17 in order to enable the General Counsel to more precisely identify the

[5] Although it would appear that Security Fund is in the insurance business as an agent of Occidental Insurance Company because it is paid directly by Occidental to process and pay claims under the insurance contracts between Security Fund and Occidental, and because travelling auditors for Occidental regularly audit the drafts and claims files in Portland, I deem it unnecessary to pass upon whether this business arrangement *per se* places Security Fund in commerce.

entity known as Security Fund. During the recess substantially all of the more serious conduct complained of by the General Counsel in the other cases took place, save for one earlier discharge in June. This alleged conduct involved, *inter alia,* five discharges among the 23 workers in

the Teamsters Building in Portland, Oregon, for union activity and/or honoring Board subpoenas on July 21 and 22, 1954, interference with the processes of the Board, and a refusal to bargain. These new allegations, together with the original allegations, were ultimately litigated before me in hearings held, as stated, from September 13 to 21, 1954.

Initially, a brief description of the situs of the alleged unfair labor practices may be helpful. All of the employees involved in this proceeding work in a small Portland office building, known as the Teamster Building. As heretofore set forth, this building houses only organizations connected with the Teamster organization, specifically, a number of Teamster locals, Joint Council, and Security Fund, at least one-half of whose trustees are Teamster designees and in some cases Teamster officials as well; in addition, desk or office space in the building was assigned to John Sweeney, an International representative of Teamsters at the time material herein. These various organizations employed a total of approximately 23 office clericals and the five discharges alleged herein to be discriminatory were in that group. Four of the discharges took place relatively close together in point of time; in fact, two occurred on the same day, although carried out by different employers.

For some years, Local 11 had traditionally represented the office employees in the various offices of the Teamster Building, as they had the office employees of other AFL affiliates in the area. Written contracts were first executed in 1952 and expired in April of 1953. Negotiations early in 1953 between Local 11 and the various Teamster organiza-

tions in Portland made no progress, chiefly because of a shifting of responsibility between International Representatives Sweeney and Clyde Crosby, then General Secretary-Treasurer of Local 162, President of the Building Association, and Recording Secretary of Joint Council 37 whenever Secretary-Treasurer James Beyer of Local 11 attempted to negotiate with one or the other.

Specifically, as Beyer credibly testified, Crosby, after originally delaying meetings, at a later date informed Beyer, on the one hand, that the question of representation was an International problem and that International Representative Sweeney would represent the various Teamster organizations in collective bargaining. On the other hand, Sweeney, when contacted by Beyer, informed him it that it was a local problem. Sweeney also raised the possibility that the office workers would be taken into a Teamster local, it being Teamster policy to do so. It is fully understandable therefore, in view of this shifting of responsibility, that negotiations broke down early in July of 1953. In fact, the building was picketed by Local 11 during a 2- to 3-week period late in July and early in August of 1953, apparently with little effect.

B. *Case 36-CA-410*

The gravamen of this complaint, the original one herein, is directed to conduct taking place in 1953, allegedly violative of Section 8 (a) (1) and (2) of the Act. Although reference is made to this conduct being instigated and directed by the International, only Local 206 and Security Fund are named as Respondents. They are alleged to have contributed support to, to have assisted, and in fact to have dominated Local 223. It may be noted that as of approximately January 1, 1953, Local 223 had no representation among the office employees of the Teamster building. However, by July, and after the conduct detailed below, all but two or three of the approximately 23 girls in the building were

initiated therein.

Turning first to Security Fund, the record demonstrates that Mary Ermence entered the employ of Security Fund in 1950 as claims manager, and was promoted to the position of office manager in January of 1953. There was no full-time paid administrator of Security Fund in the picture until April 1, 1954, when William Earhart was hired for that post. Prior thereto, various individuals, all connected with Teamster organizations in the building or in the area, served as administrators or co-administrators on a part-time and apparently unpaid basis. The complement of office personnel was five or six early in 1953, although it gradually increased until, at the present time and particularly after the employment of Earhart, the number is approximately ten. Prior to April 1, 1954, and the advent of Earhart, Ermence hired and trained employees and also directed them in the performance of their duties. She used the titles of office manager or director and signed official correspondence in such a manner. I find, in view of the foregoing, that during 1953 and prior to April 1, 1954, Ermence was a supervisor within the meaning of the Act.[6]

As heretofore found, Local 11 was the collective bargaining representative of the employees of Security Fund early in 1953 pursuant to a 1952 agreement which expired on or about April 1, 1953, as the result of a notice to terminate from Local 11.[7] Late in February or early in March of 1953. International Representative Sweeney asked Ermence, as

---

[6] The subsequent discharge of Ermence on August 16, 1954, and the question of her supervisory status at that time, is treated below in the discussion relating to Case 36-CA-648.

[7] Two contentions of Respondents may be disposed of at this point. They contend that (1) Local 11 had theretofore enjoyed an unlawful degree of union security, and that (2) Local 11 unlawfully compelled its own office employees to belong to it. As to (1), this contention, assuming it to be true, is no defense to subsequent unlawful conduct by any of the Respondents herein. As to (2), the processes of the Board are available to litigate this contention, if it be correct and meritorious.

the latter testified, to ascertain whether the employees of Security Fund wished to join a Teamster organization. Some time in April Ermence mentioned this talk to Clyde Crosby, an officer of Joint Council, president of Building Association, and a trustee of certain of the trusts behind Security Fund. Crosby assured her that it would be desirable for the office employees of Security Fund to join a Teamster organization. Thereupon, Ermence spoke to the group of office workers under her supervision. She informed them that it would be a "good thing" for them to join a Teamster organization; that Local 11 would never be able to negotiate another agreement with Security Fund; and that the Teamster officials had said "they would give us possibly a pay raise and better working conditions."

During May of 1953, Sweeney asked Ermence if she was prepared to distribute applications for membership in Teamsters and she agreed to do so. Either then or at another talk around the same time, Sweeney informed her that membership in Teamsters would result in pay raises and a 7½ hour work day. Later in May, Sweeney brought a group of applications to the Security Fund office, gave them to Ermence, and told her to distribute them among the girls "she was sure of." The applications bore both the name of the International and Local 223 in the caption. Local 223, it may be noted, had not theretofore represented office workers as such.

1675

As a result, during the latter part of May and immediately after obtaining the applications, Ermence passed them out to a number of girls, all apparently employees of Security Fund. She told the girls that these were applications to join Teamsters, to sign them if they wished, and to return them to Ermence. A number of the girls signed them, Ermence witnessed their signatures, and the applications were taken into custody by Ermence. In fact, on June 1, Ermence personally signed an application and had

it witnessed by one of the girls in the Security Fund office. Ermence then put the signed applications, of which six were introduced in evidence, into a folder. She proceeded to Sweeney's office in the Teamster Building, handed him the folder, and stated, "Here are the applications." Sweeney accepted the folder and thanked Ermence. Some time thereafter, the girls, including Ermence, were notified by Sweeney to appear at an initiation meeting; it appears that other female employees of the building also were present. The group was initiated into the Teamster organization in the presence of Sweeney and Crosby.

The testimony of various of the employees in the Security Fund office supports that of Ermence. Thus, Dorothy Carlisle, the widow of a former president of Teamster Local 162, was an employee of Security Fund until June of 1953 when she was discharged by Ermence. Carlisle credibly testified that approximately in March of 1953, Ermence spoke to the assembled employees of Security Fund at an office meeting and stated that the Teamster organization was considering establishing a local union to take in the office workers in the building; that an agreement would be drawn up and submitted to the employees; and that the employees would be given a chance to decide whether or not they preferred to transfer from Local 11. Ermence further stated on this occasion that "If we knew which side our bread was buttered on, it would behoove us to make the wise choice." This, I find, was manifestly a reference to the fact that at least one half of the trustees behind their employer, Security Fund, were appointees of Teamsters and presumably Teamster controlled, particularly in view of the official connection of at least some with Teamster organizations. Carlisle testified that she never informed Ermence that she wished to join a Teamster organization, that it was Ermence who introduced the topic, and that it was raised by Ermence at two of the office meetings of Security Fund employees.

Similar support of the testimony of Ermence is furnished by Gloria Latham who worked for Security Fund from November 1951 until January 1954 and who did join Local 223. She credibly testified that at an office meeting held early in May of 1953, Ermence informed the assembled employees that the Teamster organization would offer them a program, and it was up to the employees to decide whether they preferred a Teamster union or Local 11. Ermence also stated that "if we knew what side our bread was buttered on that we would join the Teamsters." One or two weeks later, Ermence distributed Teamster application blanks among the employees and informed them that it was for them to decide. It appears that Ermence, on this occasion, according to Latham's testimony on cross examination, stated that the employees would sign the applications if they knew "what side our bread's buttered on." I find here as well that this was a manifest reference to the economic power of Teamsters over the employees of Security Fund.

Marian Henry, an employee of Security Fund from May 1952 until her discharge on August 13, 1954, discussed hereinafter, further corroborated the testimony of Ermence. She credibly testified that in March of 1953 she belonged to Local 11, but that in April Ermence introduced her to the concept of Teamster representation. Thus, Ermence, on that occasion, summoned Henry to her desk,

stated that they did not have a satisfactory setup with Local 11, and asked how Henry felt about joining a Teamster union. Henry responded that this would defeat the purposes of collective bargaining because the latter would be a "puppet union." Ermence replied that the Teamsters had been good to them and that they would enjoy many more benefits than under Local 11. Henry then asked, "Is it a must that we join the Teamsters Union?" Ermence merely smiled and shrugged her shoulders. Henry replied that she

understood the situation. I find, under the foregoing circumstances, that Ermence by her conduct, in response to Henry's question, indicated that it was a "must." In the early part of June, Ermence handed a Teamster application to Henry, asking her to fill it out and return it to Ermence if she wished to. Henry promptly obliged. Some weeks thereafter, Henry was initiated into the Teamster organization, after being instructed earlier that day by Ermence that there would be a meeting and that she "was requested to attend."

Moreover, even one witness called by Respondents, Patricia Schlat, further corroborated the testimony of Ermence. She admitted that she had been a dues paying member of Local 223 since July of 1953; that Ermence on an unspecified occasion prior to October 1953, but apparently during this period under consideration, had called her in to her, Ermence's, office; and that Ermence then told her that the other girls were joining Local 223 and that if they did "I want you to."

In appraising the foregoing conduct, I base no findings of an unfair labor practice upon what Ermence may have been told by Sweeney or Crosby, those aspects of her testimony being set forth to show how the Teamster campaign came about. The decisive factor is that Ermence, clearly a representative of management, engaged in this conduct. Nor is it of any import that Ermence may not have been personally overjoyed at the prospect of having Teamsters as the collective bargaining representative of the employees of Security Fund. The simple answer is that Ermence was regarded, and properly so, by the office employees of Security Fund as their supervisor and in fact their only direct supervisor.

Sweeney testified that Ermence, in May 1953, had asked him for the Teamster application blanks, that he did not give her the blanks, that he did tell her to help herself to a bunch of cards on his desk, and that she never furnished

him with any signed applications. However, the record supplies no logical motive for Ermence, absent outside influence, to have attempted to swing employees from Local 11 to Teamsters. Her testimony is supported by that of Virginia Wilson, former business representative of Local 11 who, in April of 1953, was told by Ermence that the girls had been instructed not to join Local 11; moreover, Ermence, on this occasion, referred Wilson to Sweeney. Likewise, Sweeney admitted handing out a Teamster application blank in May to Virginia Olstad, the telephone operator for Building Association, as Olstad testified, telling her that all the girls in the building were joining Local 223. In fact, Sweeney's own testimony in several instances demonstrates this; thus, for example, in June of 1953 at the initiation meeting, he informed the girls that there would be an office workers local for Teamsters which would organize wherever it could in the area and that he, Sweeney, was merely doing what he was being paid to do.

Respondents stress the fact that in August of 1953, Ermence furnished an affidavit to the General Counsel, in connection with the original case, wherein she made some statements of a more innocuous nature than her testimony herein and in part contrary thereto. Ermence testified that

she had deliberately withheld certain information and shaded facts on the occasion of her affidavit because she feared the loss of her position if she furnished an affidavit damaging to Teamsters, that she anticipated that Sweeney would await her return from the local office of the General Counsel and would inspect her copy of the affidavit, and that Sweeney did precisely that. She further testified that she was determined not to perjure herself herein.

I have given considerable thought to the question of the credibility of Ermence who withstood an extensive cross-

examination and impressed me as an honest and forthright witness. I am impressed by the fact that her testimony is corroborated by that of Carlisle and Latham both of whom were referred to in the affidavit; in this respect, it is noteworthy that Carlisle had been discharged from Security Fund by Ermence. Moreover, as noted, Ermence's testimony herein attributes conduct to Sweeney which was of a pattern with conduct which he admittedly engaged in with at least one other building employee. In addition, it may be noted that the brief of Security Fund concedes that there is evidence that Ermence "assisted" Local 223 prior to August 1, 1953. I have therefore credited the testimony of Ermence.

Ermence, the only full time management representative then employed by Security Fund, commenced and carried out a campaign to transfer the affiliation of the office employees of Security Fund to Teamsters. I find that by the conduct of Ermence in soliciting membership for Teamsters passing out applications for membership therein, picking up signed applications for membership, uttering thinly-veiled threats of economic reprisal for failure to sign up with Teamsters, and promising increased benefits if the employees would affiliate with Teamsters, Respondent, Security Fund, also known as Security Plan Office, has contributed unlawful support to Teamsters and Local 223, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) and (2) thereof. *N. L. R. B.* v. *Wemyss*, 212 F. 2d 465.

The record does not warrant a finding that this conduct by Security Fund constitutes domination of Local 223. In fact, it would appear far more likely that Local 223 dominated Security Fund, in view of the fact that at least one-half of the trustees of Security Fund are Teamster appointees and that at least some are Teamster officials. Moreover, the record amply demonstrates the influence of Teamsters over Security Fund, a not unlikely situation

inasmuch as it is common knowledge that a health and welfare plan is a benefit commonly sought by labor organizations from employers who, in most cases, have not volunteered such benefits.

Similarly, I see no merit to the contention of the General Counsel that a remedy of disestablishment of Local 223 is in order. Contrary to his position, I see no reason why Local 223 cannot represent Teamster employees other than its own employees. In addition, inasmuch as the conduct under consideration herein took place prior to the appointment of Earhart as administrator of Security Fund, I find that he has not engaged in these unfair labor practices, although, as will appear, the proposed remedy will involve him. See *N. L. R. B.* v. *Mastro Plastics Corp.* 214 F. 2d 462 (C. A. 2); *N. L. R. B.* v. *Thayer Co.*, 213 F. 2d 748 (C. A. 1); *N. L. R. B.* v. *Polynesian Arts*, 209 F. 2d 846 (C. A. 6); *Marathon Electric Manufacturing Corp.*, 106 NLRB No. 199; *Radio Industries, Inc.*, 101 NLRB 912; *Knickerbocker Plastic Co.*, 96 NLRB 586; *Boss Overall Cleaners*, 100 NLRB 1210, 1237; and *Monolith Portland Cement Co.*, 94 NLRB 1358.

1678

Turning to Local 206, the facts are not intricate. June Cook, whose discharge is hereinafter discussed, was one of two female clericals in the employ of Local 206. She had been a member of Local 11 since 1947. Cook testified that in June of 1953 Financial Secretary Jack Estabrook of Local 206 spoke to her and said that he was on the spot because someone had informed International Representative Sweeney, who was also trustee of Local 223, that Cook had refused to join a Teamster local. Cook denied this, pointing out that some years before she had belonged to a Teamster organization in the area during a period of temporary employment and was on a withdrawal card from that organization. Later that day, Estabrook brought applications for membership in Teamsters to the office; he

gave one to Cook and one to the other office clerical, a Mrs. Crosby who is the wife of Clyde Crosby. Estabrook stated that if the girls had no objections they were to turn them in to Sweeney. Later that day Cook turned in a completed application to Sweeney at a time when he was in the company of Clyde Crosby.

Mrs. Crosby was not called as a witness herein and Crosby did not testify concerning the incident. Estabrook substantially corroborated the testimony of Cook. He testified that the applications had been given him by an officer of Local 223 and that he had given the applications to his two office clericals. He allegedly informed them that it was up to them to sign and that he did not care one way or the other. In this last respect, his testimony differs somewhat from that of Cook, set forth above, as well as from his subsequent testimony, fully understandable, that, as a union official he was always ready to sign up someone for the Teamster organization and that he would "go along with the rest of the boys in the Teamster Building any time." Here, as elsewhere, the testimony of Cook, a straightforward witness, is credited. I find that Financial Secretary Estabrook, as Cook testified, passed out Teamster application blanks to his two office employees and told them to sign if they had no objection. I find that this statement, viewed in its proper perspective under the circumstances, was tantamount to a direction from their employer to sign the cards.

The right of employees under Section 7 of the Act to join or assist labor organizations of their own choosing is effectively implemented by Section 8 (a) (1) and (2). These provisions forbid employers from interfering with or supporting labor organizations of their employees. They also forbid the foisting of a labor organization of the employer's choice upon employees who are not insensitive to the disadvantages that may flow from the choice of a representative opposed by their employer. I find that Local 206, as did Security Fund shortly before, has by the foregoing

conduct contributed assistance and support to Local 223, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) and (2) thereof. See *N. L. R. B.* v. *Wemyss*, 212 F. 2d 465 (C. A. 9). As in the case of Security Fund, I find that this did not constitute domination of Local 223.

C. *The Discharges*

1. Introduction; The 1954 Organizational Campaign

The remaining cases involve alleged unfair labor practices largely occurring during a period of approximately 2 months in 1954. As stated, the major portion of these allegations relates to a group of five discharges in the Teamster building, four of them between July 29 and August 16, 1954. This latter group lends itself to initial treatment and I shall proceed to consider their cases at this point.

1679

As heretofore set forth, Local 11, the traditional bargaining representative for the office employees of the Teamster building, was unable in 1953 to pin down a resposible official of the Teamsters to a bargaining session, let alone a new contract, despite an unsuccessful strike during portions of July and August of that year. Thereafter, many of the employees of the building signed up with Local 223 of Teamsters and the circumstances, at least with respect to employer interference by Security Fund and Local 206, have been set forth above.

In 1954, Local 11 again renewed its organizational efforts, its chief protagonist in the building being Marian Henry, an office employee of Security Fund who was openly dismayed at the possibility of Local 223 becoming the bargaining representative of the building clericals. In June of 1954, Henry, who had previously acted as a spokesman for the office girls of Security Fund, visited the Portland

office of the Board to ascertain whether or not a representation election was in the offing for the office clericals of the building. She apparently ascertained that no representation petitions were in the picture and determined that a petition should be filed by Local 11.

During the last week of June, she circulated among the 23 girls of the building and obtained 8 signatures to a petition asking the Board to hold an election to determine whether the employees wished to be represented by Local 223 of the Teamsters or by Local 11. Thereafter, early in July, Henry obtained blank authorization cards from Secretary-Treasurer James Beyer of Local 11 and also circulated them throughout the building. During July, and prior to the first hearing herein on July 21, 1954, she obtained 13 signed cards designating Local 11 as bargaining representative, primarily from office employees of Security Fund. She also, during the first 2 weeks of July, obtained dues for Local 11 from 14 employees in the building.

The original hearings in Case 36-CA-410, based upon charges filed by Local 11, were held on July 21 and 22. The General Counsel subpoenaed six girls, all office clericals in the Teamster building, to appear on July 21. All six appeared on that date; they were Carol Wagner, Irene Manning, and the girls ultimately discharged between July 29 and August 16 who are involved herein, namely, Virginia Olstad, Irene Morcom Barnes, Marian Henry, and Mary Ermence. The General Counsel, on July 21, then excused the first two of the six, subject to later call, but directed the other four to return to the hearing on July 22. The four girls duly appeared at the hearing on that date. These four girls were subsequently discharged, Olstad by Building Association on July 29, Barnes by Joint Council on August 13,[8] Marian Henry on August 13 and Mary Ermence on

[8] It is also alleged that Barnes was discriminated against by Building Association on July 28 or 29 when she was deprived of certain part-time work she had performed for that organization as well.

August 16, both by Security. These four discharges are taken up in that order.[9]

[9] Two other girls were subpoenaed to appear for the first time on July 22, namely Anne Foster and Patricia Schlaht. The former did not testify and the latter ultimately testified for Respondents on September 20.

2. Virginia Olstad

The consolidated complaint in Cases 36-CA-637, 638, and 639, alleges, *inter alia,* that Respondent Building Association discharged Olstad, on July 29, because of her activities in behalf of Local 11 and because she honored the subpoena requiring her presence on July 21 and 22 in Case 36-CA-410, thereby violating Section 8 (a) (1), (3) and (4) of the Act. The complaint further alleges that Respondent International, by instructing Building Association to carry out the discharge of Olstad had violated the same sections of the Act and had thereby further contributed unlawful support to Respondent Local 223 in the latter's capacity as a labor organization, within the meaning of Section 8 (a) (1) and (2) of the Act.

1680

Virginia Olstad, the only full-time office employee of Building Association, was employed full-time as a telephone operator on the building switchboard which served all the building offices, although some offices also had additional private lines. She entered the employ of Building Association on February 9, 1953. During her period of employment she received a $5 wage increase in August or September of 1953 from Building Association President Crosby who was her direct superior. Olstad, as she testified, was one of the group who, at the request of Marian Henry, had signed a petition for Local 11 in mid-July of 1954. She was discharged on July 29, effective July 30. Late in the afternoon of July 29, which was 7 days after these hearings had recessed on July 22, Crosby approached the switchboard where Olstad was on duty, silently handed

her an envelope, and left. Olstad opened the envelope and discovered therein a letter signed by Crosby and addressed to her which much to her surprise, read as follows:

> Please accept this notice as your termination of employment as of July 30, 1954.
> You will find enclosed a check in the amount of $59.25 to cover this week's salary and a check in the amount of $118.50 to cover two weeks notice.
> Sincerely regret having to take this step but I consider it necessary. I would be happy to discuss this further with you if you wish to do so.

Later that afternoon, Olstad went to Crosby's office. There is a substantial conflict between Olstad's version of the ensuing conversation and that of Crosby. Not only was Olstad a most impressive and straightforward witness but, as will appear below, there are a number of major discrepancies in the versions of Respondent's witnesses including Crosby which render their versions unworthy of credence.

Thus, Olstad testified and I find that she proceeded to Crosby's office on July 29 and, her discharge letter being silent as to a reason, asked why she had been discharged. Crosby replied that he did not wish to give her a reason as she might use it against him; that she had been warned 30 days earlier by him to stay out of building politics; that she had lost her "loyalty"; and that he was not dissatisfied with her work but that several of the secretaries of the various locals had complained about her. He offered finally to accept her resignation and to give her the best of recommendations. It is noteworthy that Crosby, in his post as Recording Secretary of Joint Council, similarly refused to give Irene Morcon Barnes the reason for her discharge on August 13.

Crosby's version was that he had warned her 30 days earlier to operate the switchboard so as to merit the con-

fidence of building tenants and not to loiter on coffee breaks; that he thereafter observed no improvement in her performance; and that he decided on July 29 to discharge her, at which time he reminded her of their prior talk and claimed that she had not complied with his recommendations.

Olstad credibly testified that there had in fact been a talk with Crosby approximately 30 days earlier but that it had not been on the matter referred to by him in his testimony. It appears that a former office employee of Security Fund, one Lucille Tombe, had returned to work in the building as an employee of Local 206; that Crosby had been instrumental in obtaining the position for her, apparently out of friendship; that there had been bad feeling between Tombe and Mary Ermence, an employee of Security Fund; that Ermence had, according to Crosby, started a silent treatment of Tombe; and that Olstad was told by Crosby on this occasion to stay out of internal politics in the building. She testified that no mention was made of her performance of her duties on this earlier occasion and that Crosby had mentioned her talking to employees during coffee breaks only on the occasion of her discharge. I find that approximately 30 days prior to her discharge Crosby spoke to Olstad about the Tombe matter; that he at no time prior to her discharge complained about the performance of her duties and, specifically, that she had monitored calls; and that these complaints were raised for the first time by Crosby on July 29 and only after Olstad sought him out and persisted in obtaining the reason for her abrupt discharge.

It is ultimately certain alleged derelictions on the part of Olstad, namely misfeasance and malfeasance of duty as a telephone operator, which Respondent basically advances as a reason for her discharge. And it is precisely these

reasons which are not only demonstrably porous in nature but, in addition, with respect to which Crosby, testifying in detail, and his supporting witnesses have substantially contradicted themselves.

The item stressed most herein by the witnesses for Respondents was the claim that Olstad had "monitored" or listened in to a telephone call made to San Diego by a building tenant, namely Secretary-Treasurer Estabrook of Local 162. Crosby, in his capacity as president of the Building Association, was understandably concerned over complaints relative to telephone service and was unhappy over the fact that some tenants had installed private lines, he preferring that all calls be handled through the switchboard. He testified that Estabrook complained to him about Olstad shortly before he, Crosby, had his talk with Olstad 30 days prior to her discharge; that Estabrook informed him he had telephoned a number in San Diego; that upon completion of the call he, Estabrook, happened to pass the switchboard; and that Olstad promptly commented that the recipient of the call, one Poteet, was a pleasant person. Estabrook allegedly expressed surprise over the fact that Olstad was familiar with the identity of the person he had called. Crosby testified that he never raised this matter with Olstad because he felt that she would deny it; nevertheless, he allegedly did communicate with a representative of the telephone company and made inquiries concerning the monitoring of calls and methods of detecting this practice.

(1) The testimony of Estabrook, however, the complainant in the matter, places the call at a far earlier date. while he did corroborate Crosby to the extent that he allegedly believed his San Diego call had been monitored, his other testimony does not support that of Crosby. It will be recalled that Olstad entered the employ of Building Association on February 9, 1953, almost one and one-half years before her discharge. Estabrook testified, contrary to Crosby that his complaint about the San Diego call was

one of several he had made to Crosby during a 30 to 60 day period which he placed as *not "too long after Mrs. Olstad came to work,"* and also shortly after Olstad came to work for the building.

Estabrook also testified that it was a result of this San Diego call and several similar incidents not explained

herein that he allegedly determined to install a private phone in his office; that he did so after the San Diego incident; and that he installed it "at least six months" prior to the date of his testimony herein on September 16. Thus, Estabrook has variously placed the date of his complaint to Crosby some time in 1953, also no later than mid-March of 1954 but apparently earlier, and in either event long before Crosby claimed that he received the complaint.

In view of the fact that Olstad had been in the employ of Building Association for almost one and one-half years, it is clear and I find that this incident, even on the basis of Estabrook's version, was an ancient matter which took place long before the discharge of Olstad and long before the talk between Crosby and Olstad late in June which, in any event, dealt with other matters, and that there was no subsequent complaint of this type from Estabrook to Crosby.

(2) But there is a more basic flaw in Estabrook's testimony concerning the San Diego incident. His testimony would indicate that he placed a call to the home telephone number of a Teamster representative in San Diego, one Poteet, and that Olstad could not possibly have been familiar with the number. The credited testimony of Olstad effectively disproves this claim. She testified that she had in fact on many occasions asked Estabrook whether Poteet was a pleasant person because, as Estabrook well knew, she was interested in locating similar employment in San

Diego and that she asked Estabrook if Poteet had a switchboard and, if not, would Estabrook persuade him to install one there. In fact, she discussed Poteet with Estabrook not once but rather once a week from early spring of 1954 until the time of her discharge.

She further testified, and I find, that Estabrook was the only person in the building who placed calls to San Diego and that she, in behalf of Estabrook, had placed person-to-person calls for Poteet in San Diego on many occasions. It would be perfectly understandable for a switchboard operator to be familiar with a telephone number regularly called out of town even on the basis of a station-to-station call. Moreover, Olstad, as elsewhere, was an impressive witness. The means for contradicting her testimony concerning these numerous out-of-town calls to San Diego, namely, telephone company records of long distance calls, was available but was not utilized, despite the fact that Crosby allegedly did not hesitate to confer with a telephone company representative when he investigated the complaint about monitoring of calls. In sum, the facts do not bear out this complaint by Respondents. Not only was the matter a relatively ancient one but there is no evidence of any warnings given to Olstad because of her alleged derelictions in servicing the calls of Estabrook. This is in strong contrast to the fact that Crosby, on his own testimony, saw fit to allegedly warn Olstad about so slight a matter as speaking to another employee although Olstad apparently had not been an offender in that respect. I find that there is no substance to this claim by Estabrook and Crosby concerning Olstad.

Respondent adduced testimony concerning Olstad's alleged dereliction of duty in handling telephone calls made by Secretary-Treasurer Thomas Malloy of Teamsters Local 255 which is not directly involved herein. According to Malloy, he was disconnected on three separate occasions while speaking on the telephone at 5:30 p.m., the hour that the building and the switchboard normally close. On either

the second or third of these occasions, which he placed as occurring 6 months prior to the date of his testimony herein on September 20, 1954, namely on or about March 20, he complained to Olstad who asked him whether he had placed or received the call. Malloy did not recall his answer at the time but did recall that Olstad replied that she could not possibly have disconnected him. Malloy also testified

that he suspected Olstad had been listening in to his calls on various occasions, the dates of which he did not furnish, because he heard a clicking noise while he was talking on the line.

There are a number of factors which render this testimony singularly unimpressive.

(1) The time that Malloy discussed the matter with Olstad, on the face of his own testimony, was approximately mid-March long before her discharge and well before the conversation that Crosby held with her approximately 30 days before her discharge.

(2) It does not appear from the record that Malloy considered the matter of sufficient weight to bring to the attention of the building management. He testified that he had not discussed his suspicion that Olstad was listening in on his calls, in view of the clicking noise he heard, with Olstad or Crosby. Malloy did not specifically testify that he did not complain to Crosby concerning those times that he was cut off, but the testimony of Crosby discloses that Malloy did not. Crosby was asked to enumerate those who had complained to him about Olstad's work and he proceeded to name several people but did not include Malloy.

(3) The testimony of Olstad discloses that she was devoid of fault on the occasion that Malloy complained about being cut off and moreover that she then explained the matter to him. Thus, on the indicated occasion, Malloy

did appear at the switchboard and complained about being cut off. Olstad ascertained from him that he had made this call and reminded him that the switchboard was an automatic one; that Malloy, by dialing the numeral nine, was automatically given an outside line; that by dialing nine Malloy, the caller, was automatically connected with the telephone equipment downtown; and that she, Olstad, used no plugs in completing such a call and in fact had no control over it. She further informed Malloy, in conclusion, that he was perforce disconnected on the other end of the call. This talk, it may be noted, took place in the presence of Malloy's secretary who happened to be standing near the switchboard, but who did not testify herein. Upon receiving this explanation Malloy made no further comment and left the scene.

(4) As to the clicking noises constituting evidence of the monitoring of calls, the uncontroverted and credited testimony of Olstad discloses quite the contrary. She testified that the building equipment is automatic; that when an incoming call is received, the operator must test to see whether the called party is talking on a line; that the test is made by touching the board in the proper hole with the tip of the operator's cord; that if the party is talking the act of touching with the cord causes a clicking noise; and that if the party is not talking there is no clicking noise and the operator then knows that the line is open and plugs it in.

It is clear and I find that Olstad's conduct on these situations did not constitute the monitoring of calls as Respondents contend. Moreover, the true explanation of the situation was presumably within the knowledge of Crosby who, as he testified, had seen fit to contact the telephone company at the time of the San Diego incident and had received an explanation of the operation of a switchboard. I find, in view of the foregoing, that there is no substance to Respondents' allegations insofar as they relate to this Malloy incident.

The next complaint concerning Olstad's performance of her duties was made by Jim Haggin, secretary of Team-

sters Local 281. According to Crosby, Haggin expressed general dissatisfaction with Olstad, stating that he believed she was listening in on telephone conversations. Haggin did not furnish Crosby with any specific instances, merely explaining his objections to Olstad and stating that he would install a private phone if conditions did not improve. The testimony of Crosby, although vague in this respect as in others, apparently attributes but one complaint to Haggin and this, together with complaints from others, allegedly was received from 4 to 6 weeks prior to his, Crosby's, testimony herein on September 15. Crosby also testified that "It could have been a couple months ago. I don't know." This, as is apparent, embraces a period starting 2 weeks *prior* to Olstad's discharge and ending 2 weeks *after* her discharge, in mid-August.

Haggin, however, supplied considerable more detail in his testimony. He testified herein on September 20 that he complained to Crosby two or three times in mid-summer of 1954 and that it might have been in June; that of three complaints, the last two were about 2 weeks apart and the last one about 1 week before Olstad' discharge; and that the first complaint was about 2 months before the last two. His testimony would place the complaints as starting over 2 months prior to her discharge, some time in May, and ending approximately July 22. Olstad denied that she had ever monitored any phone conversations of Haggin or of anyone else. Aside from the inconsistencies between Haggin's and Crosby's testimony herein, there are a number of factors which render Haggin's purported dissatisfaction with Olstad unimpressive:

(1) Initially, the testimony of Haggin was vague and self-contradictory. In his direct examination he testified

that on the first occasion he heard Olstad talking over the public address system and that on the second and third occasions he heard her talking to someone. On cross-examination, he testified that he was able to identify her voice only on the third occasion.

(2) As indicated, it was Olstad's job to page people and to make announcements over a public address system whose only microphone was located on a shelf immediately adjacent to the switchboard. Olstad, as she testified, kept her headset on while making announcements. According to Haggin, he had placed a long distance call to Seattle and heard Olstad speaking over the public address system. He claimed that he heard her voice speaking into the mike and not the reproduction of her voice over the several outlets located throughout the building. Just how he was able to completely sever her spoken words from her reproduced words, and in fact completely eliminate the latter, he did not explain.

(3) Moreover, with respect to the long distance call, it is common knowledge that an operator in placing a long distance call retains an open key until such time as she has completed the call and, if necessary, reached the proper party. In fact, Crosby, at one point in his testimony, indicated that he was aware of this necessary practice. Thus, it would seem quite appropriate for Olstad, in placing a Seattle call for Haggin, to have kept a key open until that time, and, if an announcement was needed, to have proceeded to make it.

(4) This brings up Olstad's uncontroverted and credited testimony that if she in fact had made an announcement in her customary loud voice over the system while Haggin was on the line, with the key open, the result would have been such as to shake his teeth rather than to permit him to sit still and overhear it.

(5) It is also common knowledge that a telephone operator on an automatic switchboard can overhear a conversation, if she wishes, without the parties being aware of any outside noise or of the fact that she is listening in. Assuming that Haggin in fact did overhear Olstad talking while he was engaged in two local calls, the very fact that she was engaged in a conversation would tend to refute his claim that she was eavesdropping.

(6) Finally, neither Haggin nor Crosby saw fit to raise any of these matters with Olstad which is indicative of the lack of gravity they attached to the situation.

The remaining source of displeasure with Olstad, concerning which evidence was adduced, was Reg Mikesell, president of Joint Council at the time material herein and secretary-treasurer of Local 501 of Vancouver, Washington. Mikesell was one of those identified by Crosby as having complained about Olstad at a time variously estimated by Crosby as being 4 to 6 weeks or 2 months prior to September 15, 1954, this constituting a period starting 2 weeks before and ending 2 weeks after Olstad's discharge on July 29, 1954. He also testified that Mikesell complained that Olstad was listening in to calls and that he complained twice. Crosby placed the time as subsequent to the conversation held between Crosby and Olstad one month prior to her discharge, but before the actual discharge. According to Crosby, Mikesell so firmly believed that his calls were being monitored that it was his practice, when calling his office from the outside through the board, to ask the party taking the call to call back on his, Mikesell's, private line. Just why Mikesell did not call on the private line in the first place is not disclosed.

Here as elsewhere Respondents' contentions are not impressive for, as will appear, when consideration is given to Mikesell's basis for concluding that Olstad was monitor-

ing his calls, one is almost at an utter loss to comprehend how a rational person, not motivated by discriminatory factors, could have come to the conclusion that Mikesell did.

(1) Thus, according to Mikesell, Olstad displayed familiarity with a complication that arose between Local 501 in Vancouver and Local 305 in Portland. Although both locals had similar contracts covering the milk drivers that constituted their membership, the contract for Local 305 in Portland called for a starting hour of 6 a.m., whereas the contract for Local 305 in Vancouver called for a starting hour of 7 a.m. The complicating factor was that Portland drivers in Local 305 sometimes did work in Vancouver. As a result Mikesell had instructed Business Agent Olson not to make deliveries in Vancouver before 7 a.m.

In what manner the foregoing background is directly germane to Olstad's conduct, set forth below, is not definitively disclosed by the testimony of Mikesell. However, he did testify that Olstad asked him one day what was the matter with Olson because the drivers were angry with him. Mikesell promptly concluded, on the basis of this query from Olstad, that Olstad had heard of the difficulty involving the two locals, or the resentment at Olson, by listening in to his, Mikesell's, telephone conversations. Just how he arrived at this conclusion is not disclosed; moreover, his testimony supplies no logical basis for his having come to this conclusion. Olstad testified, on the other hand, that a girl friend of hers happens to have the good fortune to be married to a man in the dairy industry; that this friend of hers, presumably repeating information gleaned from her husband, made derogatory remarks about some ostensibly unethical conduct by a Teamster representative

in Vancouver to Olstad; and the latter, in turn, attempted to defend her indirect employer and informed her friend

that she doubted whether Mikesell knew of this conduct, the precise nature of which does not appear in the record.

Olstad testified that she then spoke to Mikesell on the occasion he referred to, told him of the information she had received from her friend, and identified the source of her information. She further testified that she asked Mikesell for some information on the matter because, as she told him, she had been under the impression that the Teamster organization did not carry on that type of "tactics" any longer. Mikesell later testified only that he did not "remember" that Olstad gave him the source of her information. I find that Olstad, an impressive witness here as elsewhere, did so inform Mikesell. I further find that this incident does not on its face remotely constitute evidence of monitoring by Olstad. The fact is that she heard of certain events and mentioned them to a Teamster official. Whether she was improperly forward by so taking the initiative is immaterial herein because Respondent made and makes no issue of it. Finally, even Mikesell conceded that Olstad might have learned this information elsewhere.

(2) Even more impressive herein is the actual timing of the incident. Crosby, as noted, portrayed Olstad's alleged derelictions as taking place a matter of weeks before her discharge, and, in fact, subsequent to an alleged warning he gave her about her work 1 month prior to her discharge. Mikesell, however, testified that his conversation with Olstad took place in the *fall of 1953*; this was almost one year before she was discharged. If Mikesell mentioned the incident to Crosby at all, presumably he would have done so soon thereafter, although it does not appear from his own testimony that he ever mentioned it to Crosby. Significantly, Olstad got a raise in pay in August or September of 1953. I find that this incident, as testified to by Olstad, took place in the fall of 1953, long before the discharge of Olstad, and that there is no substance to

Respondents' claim that the incident played a part in the determination to terminate Olstad.

Conclusions

It has been demonstrated that the various episodes advanced by Respondent as evidence that Olstad engaged in improper activities as an employee are contrary to the fact, not substantiated, fall of their own weight, or are singularly trivial. I find that they were not the true reasons for her discharge. As for the other factors relied upon by the General Counsel, the record demonstrates that the evidence heavily preponderates in favor of his position herein;

(1) As stated, Olstad was one of those who signed a petition for Local 11 in mid-July 1954.

(2) Olstad was one of four female employees under subpoena to appear on July 21 and recalled on July 22 in Case 36-CA-410, the complaint in which was based upon charges filed by Local 11. These charges resulted, as found, from the organizational activities of Local 11 in 1954 and the rival activity of Teamster Local 223. As will appear, the reasons advanced in the cases of the other three women who were discharged by various Teamster organizations and Security Fund are as devoid of substance as those in the case of Olstad. And, although different reasons are advanced in each case, there is one common denominator in the cases of all four, namely, these were the only four girls under subpoena to appear in behalf of the General Counsel at this hearing both on July 21 and 22 in support of the General Counsel's complaint which was based upon charges filed by Local 11.

(3) Olstad was discharged after almost one and one-half years in Respondent's employ during which she had received a wage increase.

(4) Crosby, who conceded that she had been an excellent operator technically, save for her alleged derelictions and was willing to give her a recommendation, nevertheless, was unwilling to give her the reasons for her discharge.

(5) Crosby never warned Olstad concerning any of the alleged derelictions he raised herein, which, moreover, were demonstrated to have no merit.

(6) The record demonstrates that counsel for Building Association sought, on July 21, pursuant to a request from International Representative Sweeney to persuade Olstad not to appear at the hearing, pending his attempt to get her temporarily excused in order that the switchboard be manned until such time as Olstad was actually needed to testify. She later telephoned Counsel Landye to the effect that she had consulted with her own attorney, although she had not, who advised her to honor the subpoena requiring her appearance at 10 a.m. on July 21. Sweeney was promptly advised of this conversation by Landye. Moreover, later that day, after the conclusion of the hearing, Sweeney commented to Olstad that he had tried "to get her off the hook" but that she would not return to work. Olstad replied that she had enjoyed the proceeding so much that she did not want to leave them.[10]

Just how this appearance at the hearing was viewed by officials of the various Respondents was well indicated by the credited testimony of Mary Ermence, an employee of Security Fund, whose discharge is hereinafter discussed. Thus, on July 22, her superior, Earhart, in commenting on Marian Henry, another Security Fund employee, who appeared at the hearing on July 22, pointed out that Henry had been under subpoena and had talked with the General

[10] The complaint in Case 36-CA-648 alleges alleged unlawful attempts by Sweeney to dissuade employees from testifying; this allegation is treated hereinafter. At this point it is found, however, that although counsel for the Building Association, James Landye, acted as Sweeney's agent on this occasion, nevertheless I see nothing improper in his, Landye's, conduct.

Counsel's representative and the "enemy." While Earhart's statements are not binding upon Building Association, which knew she was under subpoena, they illustrate how the presence of the four girls on July 22 in aid of the case brought by the arch-rival of Teamsters, Local 11, was regarded.

I find in view of the foregoing considerations that the evidence heavily preponderates in favor of the position of the General Counsel herein. I find that Building Association discharged Olstad on July 29, one week after she had honored a Board subpoena to appear at this hearing on July 22 in support of a case initiated by Local 11. I find that Building Association thereby discriminated with respect to the hire and tenure of her employment in order to encourage membership in Teamsters and discourage membership in Local 11, thereby interfering with, restraining, and coercing employees in the exercise of the rights guaranteed under Section 7 of the Act, and violating Section 8 (a) (1) and (3) thereof.

The complaint also alleges that this discharge was violative of Section 8 (a) (4) of the Act. Several of Respond-

ents' briefs stress the fact that Section 8 (a) (4) spells out a violation where an employee has "given testimony under this Act," whereas Olstad and the other three employees had merely honored subpoenas and appeared at the hearing on July 22. It is clear, however, that their presence at the hearing was commanded by the General Counsel as a preliminary to their ultimately testifying at an undetermined date or hour; this is underscored by the fact, as the record demonstrates, that the early days of this hearing were unexpectedly devoted to procedural matters and that all four girls later did testify, although after their discharges.

The Board's administrative process must be protected by removing the impediment of employee fear of reprisal because one has furnished evidence which the Board requires in order to fulfill the determinations entrusted to it by Congress. The objectives of the Act would be thwarted if the employer could impose such restraints upon the right of an employee to appear and testify. It is mere sophistry to state that an employee is protected because he actually gave testimony at a Board proceeding, but is not protected because he honored a subpoena, appeared at the hearing, and was discharged before he had an opportunity to testify. The invasion of the employee's rights and impairment of the administrative process, in my view, is all the greater in the latter instance.

I find, therefore, that by the discharge of Olstad, Building Association has also engaged in conduct violative of Section 8 (a) (4) of the Act. See *N. L. R. B.* v. *Fulton Bag and Cotton Mills,* 180 F. 2d 68 (C. A. 10); *Pacific Intermountain Express,* 110 NLRB No. 14; *Kanmak Mills,* 93 NLRB 490, 493; *South Jersey Coach Lines,* 92 NLRB 791; and *Briggs Manufacturing Co.,* 75 NLRB 569, 570.

The consolidated complaint in Cases 36-CA-637, 638, and 639, further alleges that the discharge of Olstad by Building Association was carried out pursuant to instructions from Respondent International and that the International has as a result also violated Section 8 (a) (1), (2), (3), and (4) of the Act. As I construe the complaint and the evidence, the General Counsel is proceeding on the theory that the liability of the International results from the fact that International Representative Sweeney brought about the discharge of Olstad as part of a plan to wipe out support of Local 11 in the building as well as to prevent hostile testimony in these hearings. While there is evidence that Sweeney was actively engaged in promoting the interests of Teamsters Local 223 and was opposed to the representation of employees by Local 11, I do not believe that the

record will support a finding that Sweeney, as an agent of the International, directed, authorized, or brought about Olstad's discharge. The facts herein are equally susceptible of the explanation that the discharge of Olstad was carried out by Crosby independently of the instructions by Sweeney, although presumably not contrary to his wishes.

The General Counsel has not argued herein that the International is responsible for the acts of its subordinate organizations absent any direct evidence of authorization or ratification. See *United Mine Workers* v. *Coronado Coal Co.*; 259 U. S. 344. While a good argument could be made in support of this proposition, inasmuch as the facts present herein demonstrate a greater degree of International control over its subordinate organizations than was present in the above-cited case, and the record also demonstrates more active participation by the agent of the International in the affairs of Teamster subordinate organizations in the Teamster Building than would accompany mere organizational efforts, I do not deem this issue of International responsibility, *per se,* for the acts of its subordinates, to have been litigated before me. Accordingly I shall recom-

mend that this allegation of the complaint against the International be dismissed.

3. Irene Morcom Barnes

The case of Barnes actually involves two acts of alleged discrimination against her, both carried out by Crosby in two of his three roles herein, namely as president of the Building Association and as secretary of Joint Council. The complaint in Cases 36-CA-637, 638, and 639 alleges that Building Association on July 29, 1954, relieved Barnes of certain part-time duties previously performed by her. The complaint in Case 36-CA-647 alleges that Joint Council, on August 13, discharged Barnes from her full-time position. Both complaints also attribute responsibility for the

discharge and loss of work to the International on the theory that the action was taken pursuant to instructions from the International.

Barnes entered the employ of Joint Council in April of 1953 and was one of several full-time office clericals in its employ. Her primary duties, initially, were as secretary to Ward Graham, then secretary-treasurer of Joint Council. Barnes also was retained on or about the same date as a part-time bookkeeper for Building Association. For this she was initially paid $70 weekly by Joint Council and $5 from Building Association. In the fall of 1953, she received a $5 wage increase from Joint Council and another one and one half months later, this making a total of $80. Several weeks later her pay from Building Association was raised to $10 weekly.

The record demonstrates that Barnes was a supporter of Local 11. Late in June or early in July of 1954, she signed the petition circulated by employee Marian Henry of Security Fund urging the Board to conduct an election and ascertain whether the employees of the Teamster Building desired representation by Local 11 or by Teamsters Local 223. During July, she also signed a card designating Local 11 as her bargaining representative. Barnes was one of six girls under subpoena by the General Counsel on July 21 who attended the initial hearings herein and was one of four, including Olstad whose discharge by Building Association has previously been found to be discriminatory, who were directed to return on July 22 and did so. As in the case of Olstad, events affecting her tenure of employment happened rapidly thereafter.

On July 28 or 29, 1954, Crosby, acting in his capacity as president of the Building Association, relieved Barnes of her duties on the Association books, giving her no reason. As demonstrated, this was either the same day or the day before the discharge of Olstad by Crosby who similarly furnished Olstad no reason. On the following day, Crosby

notified Barnes that she would no longer relieve the switchboard operator, Olstad, on the latter's coffee breaks. On August 13, Crosby, acting in his capacity as recording secretary of Joint Council and in behalf of its executive board, informed Barnes that she was discharged. Crosby refused to give her a reason and admitted herein that he then stated he expected her to file charges with the Board.[11]

The defense of Joint Council and Building Association went into great detail to establish that the discharge of Barnes resulted from her failure to follow a procedure established by Joint Council early in March 1954. Similarly, Crosby testified that he previously took away Barnes' work on the Building Association books because she had not followed these procedures on Joint Council work and that as a result he lost confidence in her. Some explanation of this procedure may be of assistance in evaluating subsequent events.

The record amply demonstrates that to some extent Barnes was caught in the middle of an intra-union battle for power, although as will appear this constituted a pretext for her discharge. Ward Graham, for whom Barnes primarily worked as secretary, had been secretary-treasurer of Joint Council from February 1953 until August 20, 1954. However, some months before, he had lost much of his power in the affairs of Joint Council and this power in turn had fallen upon Crosby and International Representative John Sweeney. On or about March 5, 1954, Graham was relegated to the inferior post of secretary-treasurer of Teamster Local 324 in Salem, Oregon. Although he retained his post as secretary-treasurer of Joint

[11] There is a conflict between Barnes and Crosby as to whether Crosby, on this occasion, told Barnes, as she testified, that she would discover the reason for her discharge as the other girls did. Phyllis Dietrich, her co-worker, supports Crosby in this respect. There is no conflict, however, over the fact that he refused to give Barnes a reason for the discharge.

Council, he retained little if any influence in the affairs of that organization, but did appear in the Portland office one or two times weekly.

On March 5, 1954, the executive board of Joint Council, consisting of President Mikesell, Recording Secretary Crosby, Trustee Estabrook, and one other, passed a resolution which withdrew the prerogative of its secretary, namely Graham, to dictate policy. In addition to naming John Sweeney as trustee of Taxicab Drivers Local No. 281, not involved herein, the resolution designated Sweeney "to coordinate the activities of all departments of the Joint Council and its organizers." Stated otherwise, as Respondents in effect contend, Sweeney took over the duties of Graham, although allegedly unwillingly, and was designated to handle and process matters coming before the Joint Council. Graham, however, was not entirely out of the picture. It is against this background that Respondents contend Barnes became an unsatisfactory employee, demonstrating loyalty primarily to Graham, not complying with instructions about the delivery of mail to Sweeney, and was discharged for that reason.[12]

The gravemen of Joint Council's difficulty with Barnes was its purported dissatisfaction with the handling of mail addressed to the Joint Council during the period from March 5, 1954, until the discharge of Barnes on August 13,

[12] Some testimony was developed to the effect that Barnes, while relieving on the switchboard once told another employee that she had listened in on a telephone conversation and that this was reported to Crosby shortly before her discharge, although the incident occurred many months before her discharge. The record amply demonstrates, however, that Barnes was not discharged for that reason by Respondents and in fact it was not mentioned to her or taken up by the executive committee of Joint Council. Crosby in his testimony originally gave only the reason described above, and later, as an afterthought, did bring up this other matter, saying that he brought it up unwillingly. However, he displayed no such reluctance in bringing up a similar allegation when testifying about the discharge of Olstad. Hence, I deem it unnecessary to resolve the conflict herein as to whether Barnes did or did not listen in to a particular telephone conversation some months prior to her discharge.

over 5 months later. It was contended that Joint Council set up a procedure which, had it been followed by Barnes, would have resulted in prompt processing of mail. However, an analysis of the basic contentions of Respondents discloses their lack of merit.

(1) Barnes credibly testified that her instructions were that mail addressed to the Joint Council, other than personal mail addressed to Graham, was to be turned over to Sweeney for handling on those days when Graham was not in Portland, namely 3 or 4 days a week. The testimony of Joint Council President Mikesell, in at least one instance agreed with that of Barnes. He allegedly informed Barnes that Graham should get the mail when in Portland, but otherwise that Sweeney should; it may be noted that Mikesell, his term as president ended, replaced Graham on August 25 as secretary-treasurer of Joint Council, Graham having resigned some days earlier. Crosby gave conflicting versions on the matter, testifying at one point that Barnes was directed to route all mail across Sweeney's desk, under all circumstances, but elsewhere testifying that if Graham was in the office he was to get the mail. In fact, Crosby allegedly admitted to Graham that the latter procedure was a desirable one.

(2) Sweeney testified that from March 5 through the discharge of Barnes on August 13, not a single piece of mail for the Joint Council was turned over to him. This I deem fantastic, irrespective of whether the mail was light, as Barnes testified, or, as Mikesell testified, heavy because the operations of Joint Council were big business. This serves only to highlight Mikesell's testimony that he concluded, within several weeks after March 8, that Barnes was secretive, was not carrying out orders, and that he therefore took up the matter with her on a large number of occasions. If the operation were of the size portrayed by

Mikesell, and, bearing in mind Sweeney's foregoing testimony that no mail was delivered or processed by him, one could only conclude that the organization became defunct within a matter of weeks; this very definitely did not come to pass. Moreover, although the record amply demonstrates that the officials of Joint Council, and particularly Crosby, had no hesitancy in exchanging strong words with Graham about Joint Council matters, neither Crosby nor Mikesell deemed this development so serious as to take Graham to task during this entire period of over 5 months, despite the fact that he, in practical effect, had been deposed from office by the executive committee of Joint Council which included both Crosby and Mikesell.

(3) Respondents have contended that Barnes was secreting Joint Council mail. Barnes, it appears, had a key to Graham's desk and was under instructions from him to place all personal mail addressed to him in the desk. However, all mail entering the building was processed initially by Virginia Olstad, the telephone operator, and no one connected with the Joint Council deemed the mail situation to be so grievous during this period of over 5 months as to inquire from Olstad concerning the mysterious disappearance of all this heavy mail, as characterized by Mikesell. Noteworthy herein is the fact that Edith Manning, an office employee of several locals in the building who customarily received some of her employers' mail from Barnes, testified that mail was frequently misdelivered in the building; that she had heard one of her employers, Secretary Jim Haggin of Local 281, complain about mail being late; but that she had never heard Barnes blamed for any delay in the mail.

(4) As evidence of Barnes' alleged failure to follow this operating procedure, Respondents offered in evidence some 23 letters and telegrams which Mikesell, testifying on September 20, 1954, said he found in Graham's desk when he

searched the desk on Thursday evening, *September 16*, pursuant to a request from counsel for the International made that same evening, and while this hearing was in progress. However, Crosby, testifying on September 15, claimed that this correspondence had been found in the desk on *August 20 or 21 by Mikesell and himself* while jointly looking through the desk.

Mikesell's further testimony herein is of interest. He testified that he was confirmed as secretary-treasurer of Joint Council on August 25 and left for a 2-week vacation on September 1. He claimed that upon his election he did not take over Graham's desk; that Graham turned over the key to him on August 25; that he, Mikesell, opened the desk either then or prior to September 1 when he left on his vacation; and that on leaving he, Mikesell, informed the officials of Joint Council that the desk was available for use if anything was needed. He, Mikesell, however, did not look into the desk until September 16, when, as indicated above, he was asked to do so, and when he allegedly found the exhibits offered herein. This of course is irreconcilable with the testimony of Crosby that he and Mikesell went through the desk together on August 20 or 21 when the two of them found it allegedly full of Joint Council mail.

(5) Moreover, the record does not disclose that Graham improperly received and handled the items in question. Some of these items were patently of no great consequence and the record will not support a finding that this correspondence did not properly come to Graham either in letters marked personal or on those days when he was in the office. Furthermore, testimony presented by witnesses for Respondent that replies were not discovered does not constitute evidence that replies were not made by Graham, in view of an incomplete search and in view of the fact that Graham was never questioned by Respondents on the matter, although available and, in fact, testifying for the General Counsel on other matters. Finally, a number of the

items were addressed to Graham by name and others were demonstrably minor in significance.

Conclusions

As demonstrated, Respondents' reasons for the termination of Barnes are not impressive. I am convinced, on this record, that were she as derelict in the performance of her duties as portrayed by the witnesses for Respondents, she would not have been retained for over 5 months in the face of the much more direct treatment handed out to her superior, Graham. I find that the reason advanced was not the true reason for her discharge. While the record demonstrates that Barnes may well have sympathized with Graham in his struggle for power, I am convinced that absent other factors she would not have been discharged when she was. The record does supply these other factors.

Thus, Sweeney considered Barnes as being pro-Graham and opposed to Sweeney carrying on the functions of Graham. This situation existed at the time of the initial hearings herein where Sweeney was allied with the various Respondents. Moreover Sweeney knew that Barnes was prepared to present testimony at the hearing which he, Sweeney, considered to be damaging to Teamsters. Thus, on the day before the opening of the hearings, Sweeney was advised by Counsel Landye, who in turn had been so advised by Barnes, that Barnes intended to tell the truth at the hearings and, more specifically, to testify that Sweeney had given her an application for Local 223 in 1953.

Sweeney promptly called in Barnes, as she testified, and informed her that he had not done so. She replied that he had also given one to Olstad, which he also denied. Sweeney

denied herein that he had given an application to Barnes in 1953; however he did admit that he had given one to Olstad, as in fact the latter also testified. Accordingly I

credit the testimony of Barnes. In any event, on either version, Sweeney was on ample notice that Barnes would be a witness whom he, Sweeney, deemed to be hostile to the various Respondents.

More significantly, the record fully demonstrates the close relationship and cooperation between Crosby, the employer of Barnes, and Sweeney. In fact, Respondents' contentions concerning Barnes, treated above, demonstrate that Sweeney was in frequent contact with Crosby relative to the manner that Barnes allegedly performed her duties. Here as well, Administrator Earhart of Security Fund, who, as appears below, was in close and frequent contact with Crosby, informed Mary Ermence of Security Fund, prior to the discharge of Barnes, that Barnes was known to be associated with Local 11. Although Earhart's statements are not binding upon Crosby, they are significant in evaluating the views of the small group of men who, it is clear from this record, ran affairs in the Teamsters Building.

Also significant herein is the fact that Barnes was discharged in the same manner as Olstad, that is, without a reason being assigned by her employer, and that Crosby played a leading role in the discriminatory discharge that very same day, August 13, of Marian Henry by Security Fund, discussed below. See *E. Anthony & Sons* v. *N. L. R. B.*, 163 F. 2d 22, 26-7 (C.A.D.C.) cert. denied 322 U. S. 773. This unexplained coincidence of time is indicative, not of a real coincidence but rather, in the present circumstances and on this record, of a deliberate effort by management in the building to "scotch the lawful measures of the employees before they had progressed too far toward fruition." *N. L. R. B.* v. *Jamestown Sterling Corp.* 211 F. 2d 725, 726 (C. A. 2); and *Sears Roebuck & Co.*, 110 NLRB No. 187.

I find, in view of the foregoing, that Barnes, a Local 11 sympathizer, was discharged by Respondent Joint Council

on August 13, 1954, not for the reason advanced, but because she had identified herself on July 21 and 22, when under subpoena by the General Council, with the faction of building employees including Olstad which was sympathetic to Local 11 and which was prepared, in support of its charges, to present testimony hostile to the interests of Respondents. The existence of a justifiable ground for discharge is no defense if it is not the moving cause. *Wells, Inc.* v. *N. L. R. B.*, 162 F. 2d 467, 460 (C. A. 9), and *N. L. R. B.*, v. *Ronney & Sons Furniture Mfg. Co.*, 206 F. 2d 730, 737 (C. A. 9) cert. denied 346 U. S. 937. I further find that Respondent Building Association on July 28 or 29, and for the same reasons, relieved Barnes of her duties with that organization, both actions being taken by Crosby in his respective roles with the two organizations. This conduct by Building Association and Joint Council patently was violative of Section 8 (a) (1), (3), and (4) of the Act. *N. L. R. B.* v. *Swinerton,* 202 F. 2d 511 (C. A. 9), cert. denied 346 U. S. 814, and *N. L. R. B.* v. *Whitin Machine Works,* 204 F. 2d 883 (C. A. 1).

As alleged in Case 36-CA-647, it is found that the discharge of Barnes by Joint Council constituted a visible demonstration that support of Local 11 and assisting the General Counsel in his presentation of the cases bottomed upon charges filed by that organization, would be met with prompt reprisals. Inevitably, her discharge constituted encouragement of and assistance to Local 223, the chosen vehicle of the Teamster organization to represent the office employees of the building. I find that her discharge constituted assistance to and support of Local 223, within the

meaning of Section 8 (a) (1) and (2) of the Act, but not domination thereof. However, for the reasons previously indicated in the discussion of the discharge of Olstad, and particularly because the record does not demonstrate that

Sweeney specifically directed, caused, or ratified the actions taken against Barnes, I do not find that Respondent International was responsible for the discrimination against her and has thereby engaged in unfair labor practices.

4. Marian Henry

The complaint in Case 36-CA-648 alleges, *inter alia,* that Security Fund and its administrator, William C. Earhart, both named as Respondents, discriminatorily discharged Marian Henry on August 13, 1954, within the meaning of Section 8 (a) (1), (3) and (4) of the Act. It also alleges that Respondent International and its agent, International Representative Sweeney, instructed the aforenamed Respondents to carry out the discharge of Henry, thereby violating the same sections of the Act. It is further alleged that this conduct by the above-named Respondents constituted unlawful domination of, and support to, Teamster Local 223 within the meaning of Section 8 (a) (1) and (2) of the Act.

Marian Henry entered the employ of Security Fund as an office clerical on May 15, 1942, and was discharged by Earhart on August 13, 1954. This, it is to be noted, was the same day that Crosby, the president of Building Association and recording secretary of Joint Council, who plays a part in the Henry case, discriminatorily discharged Irene Barnes, as heretofore found. At the time of her discharge, Henry had the second highest seniority in the office complement of approximately ten. There is no evidence of dissatisfaction on the part of Security Fund with her work, and the reason advanced by Earhart for her discharge was her alleged insubordination, which resulted in his decision on August 13, as he testified, to discharge her that day.

While Earhart was newly employed by Security Fund on April 1, 1954, and initially was not familiar with its operations and personnel, he does not contend that he lacked such familiarity after several months; in fact, he inaugurated a number of changes not long after he was

hired, allegedly to improve the operating efficiency of the office. In such a context, entitled to weight herein is the fact that Earhart, when asked by Henry for a wage increase, granted her a $5 increase effective the week of June 21, this being the week after her return from her vacation. I find, as Office Manager Ermence testified, that Earhart did not consult with Ermence on the matter prior to granting the increase. Although Earhart claimed that he did talk it over with Ermence before granting it, I find only that he asked her to communicate the news of the increase to Henry. And in any event, Earhart testified that both he and Ermence agreed that the wage increase was in order.

Insofar as this record indicates, Henry was the leading advocate of Local 11 in the Building, and was openly opposed to Teamsters Local 223. She was, moreover, a leader among the girls in the building, as well as among those in the Security Fund Office, and carried out certain concerted activities in their behalf.

Thus, when Local 11 renewed its organizational activities in the building in 1954, Henry became its chief protagonist. In May of 1954, 9 of the approximately 10 girls in the Security Fund office voted among themselves on the issue of whether Henry should represent them in the event they needed representation; they voted 6 to 3 that she should. Again, around June 1, she polled the girls in the Security Fund office as to their satisfaction or dissatisfaction with certain remodeling work being contemplated by Earhart. Later that month she visited the Portland office of the Board to ascertain whether or not a representation election was in the offing for the office clericals of the building. Learning that there was none, she concluded that a petition

should be filed by Local 11. During the last week of June, she circulated among the 23 girls of the building and obtained eight signatures in favor of a Board election to

determine which of the two labor organizations should represent the building employees. Early in July she distributed authorization cards for Local 11 in the building, and obtained 13 signed cards, primarily from employees of Security Fund, prior to July 21. Also, during this latter period she collected dues for Local 11 from 14 girls.

As found, Henry was one of four girls, including Olstad, Barnes, and Mary Ermence, subpoenaed by the General Counsel to appear on July 21 and testify in support of charges brought by Local 11 against Respondents. She, too, was one of the four who were directed to return on July 22 and did so. Although Earhart, several days prior to July 21, informed Henry that counsel for Security Fund would get her excused from her subpoena, Henry replied that she had been served by the Board and would appear unless the Board excused her from it. Precisely how Henry's appearance on July 21 and 22 was viewed by her superior, Earhart, is set forth below.

On August 13, Henry was discharged by Earhart under the following circumstances: Shortly after the office opened, Crosby appeared and asked for Earhart who had previously telephoned from his home and informed Henry that he was ill and would not be in until 11:30.[13] It may be noted that, in addition to his three posts with Teamster organizations, as described above, Crosby was also a trustee of at least eight of the trusts administered by Security Fund and, indirectly at least, an employer of Henry. Henry duly reported Earhart's illness to Crosby, who then asked for his home telephone number, saying that he wished to discuss the remodeling of the Security Fund offices with Earhart; the details of this remodeling project appear below. Earhart appeared on the scene shortly before noon and received some messages from Henry. He made a telephone call, left, and soon returned. He called Henry into his office, said that she had gone over his head on the remodeling job, that this constituted rank insubordination which he would not tolerate, and that her services were no longer

desired. Henry protested that she had been in the office for over two years, that Earhart had never warned her or criticized her work, and that she was entitled to a warning. She added that the decision to terminate her was not that of Earhart, and that she was aware of its source. Earhart made no reply.

Earhart testified that he discharged Henry around lunch time on August 13; that he believed it "possible" that he discharged her after talking with Crosby that day; that he, Earhart, made the decision that very day, August 13, to discharge Henry; and, consistent with what he told Henry, that the reason for her discharge was her lack of acceptance of the remodeling project and going over his, Earhart's, head to Crosby, as president of Building Association.

The history of the remodeling project is as follows: Security Fund had office space in the basement of the Teamsters office building. After Earhart entered the employ of Security Fund in April of 1954, he concluded that the office ought to be rearranged in the interest of efficiency. This project, while utilizing the same working area, involved the erection of new partitions and the removal of others, this resulting in Earhart and Ermence having separate offices and placing the rest of the employees all in one large room. After being considered and discussed

for some period of time, both by Earhart and the office employees of Security Fund, the project was scheduled to start on or about July 24. It was started at that time and was substantially completed early in August, around August 6, when Office Manager Ermence left on her vacation. Certain finishing touches were applied between that date and August 13. There is no dispute but that Henry,

[2] Findings hereinafter are based upon the testimony of Henry, a clear and forthright witness. Her testimony is not substantially disputed by that of Earhart.

as Respondents contend, was opposed to the remodeling project, although as further appears, she was acting in a representative capacity for the girls in the Security Fund office who had designated her as their spokesman.

Henry informed Earhart a number of weeks prior to her discharge, and some days prior to July 22, that the girls in the Security Fund office uniformly opposed the changes. It appears that the girls in discussing the proposed changes with Henry had expressed the fear that the changes would constitute a disruptive influence that would throw them behind in their work, which apparently proved to be the case.

On July 22, Henry attended the second day of the hearing under subpoena, as set forth above, after previously declining Earhart's suggestion that counsel for Security Fund get her excused. During a recess at the hearing, Earhart spoke to Office Manager Ermence about Henry. He stated, according to Ermence, that "Four Top Teamster officials" had asked him that day what was "wrong" with Henry, because Henry "went up and talked to Mr. Tillman (counsel for the General Counsel) and the enemy." Ermence pointed out that Henry was present at the hearing under subpoena; Earhart replied that he nevertheless was unhappy over the matter and asked "Doesn't she know who signed her pay check?"[14]

Just about the same time, but in any event on July 22, Henry telephoned Crosby and asked to see him in person about the remodeling job, explaining that the girls in the Security Fund office were one hundred percent opposed to it. He replied that it was Earhart's responsibility and when she pointed out that Earhart had refused to discuss

[14] These findings and those that follow are based upon the straight-forward testimony of Henry and Ermence, which is credited here as elsewhere. The testimony of Earhart either supports or does not substantially dispute theirs. In fact, Henry presented her testimony despite her expressed fear, stated on cross-examination, of Teamster officials. Whether justified or not, her presentation of testimony adverse to Respondents, under such circumstances, lends weight to her testimony.

the merits of the plan with her, as he had, Crosby refused to talk to Henry about it then or any other time.

At the end of the day, on July 22, Earhart had another conversation with Ermence wherein he disclosed that he had been informed by Crosby of Henry's telephone call. He informed Ermence that Henry had done something unbelievable and very bad; that she "had the guts to go to Clyde Crosby and tell him about the remodeling job"; and that she had told Crosby that the entire office staff was unhappy over the remodeling which was due to commence on or about July 24.

On Friday morning, August 6, Earhart again spoke to Ermence, stating that something would have to be done about Henry because Crosby had informed him that Henry

"talks too much." Ermence pressed Earhart for details and he, in turn, explained that Henry had allegedly been discussing the discharge of Olstad around the building and saying that Olstad "would live to see the day when the NLRB put her back to work." Ermence explained that Henry might have been influenced by her, Henry's, close friendship with Olstad, and that "a lot of us girls here in the office" regretted Olstad's departure.

Later that day, August 6, Earhart called Henry into his office. He stated he had learned from Teamster officials that Henry was upset over the discharge of Olstad. Henry admitted that she was, because Olstad was a close personal friend, and added that even Ermence became ill over the news that Olstad had been discharged on July 29. Earhart added that the Teamster officials had also attributed to Henry the statement that Olstad would be put back to work before long. Henry disavowed responsibility for rumors in the building, whereupon Earhart told her that the matter would be dropped, but to stay out of internal politics in the building. Earhart spoke to Ermence still later that day,

informed her that he had spoken to Henry earlier that day, and that "everything was fine." He stated that Henry denied making the statement attributed to her, but she had admitted that she was unhappy over the discharge of Olstad because of her close friendship with the latter. Earhart told Ermence that if Henry did not "keep her nose out of" building policies he would have to do something about it. Ermence was absent from the building the following week on her vacation.

On Thursday, August 12, a Teamster publication was circulated in the building and it contained an article dealing with the organizational campaign of Teamster Local 223. Henry and a group of Security Fund employees were discussing the article when Earhart entered the office. Henry then pointed to the article and asked Earhart how she was expected to stay out of internal politics in the building when such information appeared in a Teamster paper. She explained that the entire office was upset and that some of the girls had asked Henry, who was their spokesmen, to procure the return of their dues and initiation fees from Local 223. Earhart read the article but made no comment. The article, it may be noted, was of a factual and relatively innocuous nature, and its contents are not deemed particularly germane herein, save for the fact that they related to the organizational campaign of Local 223.

On August 13 Henry was discharged by Earhart allegedly for insubordination in going to Crosby about the remodeling project, under circumstances heretofore set forth. No other reason was given her. Turning to a consideration of the merits of this contention by Respondents, it readily becomes apparent that the contention is supported primarily by improbable and contradictory testimony and will not stand up as the true cause for her discharge.

(1) Earhart claimed that he discharged Henry on August 13 because of her insubordination in contacting Crosby. However, the alleged insubordination took place

on July 22, and Earhart was informed of Henry's conduct by Crosby on the very day she spoke to Crosby. Earhart, in fact, mentioned the incident on the same day to Ermence, but disclosed no intention to discipline Henry, although at that time he was obviously taking Ermence into his full confidence. And, although Henry had engaged in no further alleged insubordination act of this nature involving the merits of the remodeling plan and/or Crosby, Earhart allegedly decided on August 13 to discharge her.

(2) Also deemed significant herein is the fact that just one week before her discharge Henry was taken to task by Earhart for the discharge of Olstad, heretofore found dis-

criminatory, and predicting her to return to work in the building as a result of N.L.R.B. intervention. Although Earhart mentioned to Henry that Teamster officials had reported this to him, his talk the same day with Ermence discloses that Crosby was at least one source of his information and an influential one as well.

(3) But one day before her discharge, Henry openly criticized the organizational campaign of Local 223 and informed Earhart that some of the girls were interested in withdrawing therefrom. The implications of this for Earhart, who had been selected for his job by Teamster officials in the building, including Crosby, are obvious.

(4) It would appear that the foregoing statement by Henry brought matters to a head and was the final straw following her prior prominence in Local 11 organizational activities, her solicitation of signatures for an election, her signing up girls in the building for Local 11, and her collection of dues for Local 11. Also significant herein is the fact that Henry appeared at the hearing on July 21 under subpoena by the General Counsel, was one of four recalled on July 22, and openly conferred at the hearing with the General Counsel and counsel for the charging party in the

presence of Teamster officials. How this conduct was interpreted by the latter and, more particularly, how it was ultimately evaluated by Earhart, is reflected in Earhart's statement to Ermence that Henry had conferred with the General Counsel and the "enemy" at the hearing, and in his, Earhart's, pointed reference to her ignoring the identity of the people who signed her pay checks, a reference which I find was patently directed to identification of the Teamster organization as her indirect employer.[15]

(5) The foregoing serves only to highlight the order in which events took place on August 13. Earhart originally testified that he "possibly" conferred with Crosby that day prior to discharging Henry, but later conceded that he had. Crosby admitted that he spoke with Earhart that morning, prior to the discharge and told him of a rumor in the building that the girls had allegedly been instructed to slow down and that he thought Henry was the girl who issued the instruction. He allegedly informed Earhart that he wanted him to investigate the matter and put a stop to it. Crosby conceded that he might have indirectly indicated in this talk that Earhart should discharge Henry. This, however, is contrary to the testimony of Earhart who claimed that no one instructed him to discharge Henry.

While Crosby testified that on this occasion he discussed only the slowdown in the building with Earhart, the testimony of Earhart attributed other topics of discussion to Crosby. Thus, according to Earhart, Crosby, in addition to mentioning the slowdown, mentioned Henry's activities in the remodeling project, as well as her views of the Olstad discharge. Aside from the conflict in the two versions of

---

[15] At this point it may be noted that Earhart claimed that the office employees of Security Fund were his, and not those of the trusts behind Security Fund and as a result, not the employees of the trustees of the Fund, one half of whom were Teamster designees; it will be recalled that Crosby was trustee of at least eight of these trusts. Although Earhart's contention is not sustainable, inasmuch as Security Fund is the operating arm of the trusts, I deem it unnecessary to develop this precise relationship herein.

this conversation, further demonstrating the unreliability of the testimony, it is clear that Earhart's version brings up the remodeling project which involved relatively ancient conduct by Crosby, as well as the Olstad discharge which involved Henry's protest of the discrimination against Olstad by Crosby, also not then a current matter. Significantly, Earhart elsewhere testified that he discharged Henry only because of her insubordination in that respect; in fact he mentioned nothing else to her on August 13.

1699

Moreover, there is no substantial evidence that Henry directed or instigated any slowdown in the building. Nor did Earhart deem it necessary to investigate this matter. Significantly, Earhart did not in this conversation inform Crosby that he had previously selected Henry for discharge, a normal response in that context, were such the case. I find, on a clear preponderance of the evidence, that, prior to this conversation with Crosby on the morning of August 13, Earhart had not selected Henry for discharge. And although Earhart claimed herein that he was not aware of Henry's membership in Local 11, the record does clearly demonstrate that he knew her to be opposed to Teamsters Local 223, and in fact had so expressed himself to Ermence. Moreover, Earhart's comment to Ermence on July 22 clearly indicates that he regarded Henry as a supporter of Local 11.

(6) With Crosby on the scene on August 13, one is inescapably drawn to the fact that this was the very same day, August 13, that Crosby personally discharged Irene Morcom Barnes, under circumstances hereinabove found to be discriminatory. Moreover, it is clear from the foregoing sequence of events that it was Henry's espousal of the case of Olstad which, in part, put her in disfavor with Teamster officials and as a result with Earhart, who I find on this record as well as on his own testimony, was very

much subservient to the wishes of the Teamster officials, a not illogical situation in view of the structure of the trusts behind Security Fund. And, as Earhart testified, Crosby was a member of the committee who selected him for this job. Furthermore, irrespective of whether the discharge was directed by Crosby or not, the record still overwhelmingly discloses that the reasons advanced by Earhart and Security Fund for the discharge of Henry simply do not stand up. I find that they were not the true reasons for her discharge.

Conclusions

I find on a preponderance of the evidence herein that Henry was discharged by Security Fund and its administrator, Earhart, not for the reasons advanced by them, but because of her identification with Local 11 activities; her opposition to Local 223; her participation in the hearings of July 21 and 22, 1954, when she was identified by her employer as allied with the "enemy" because when under subpoena by the General Counsel she conferred with him and counsel for Local 11; and her support of Olstad, whose previous discharge was discriminatory. Her discharge for those reasons is found to have been violative of Section 8 (a) (3) and (4) as well as derivatively of Section 8 (a) (1) of the Act. *N. L. R. B.* v. *Nemec Combustion Engineers*, 207 F. 2d 655 (C. A. 9) cert. denied 347 U. S. 917; *N. L. R. B.* v. *C. & J. Camp, Inc.*,—F. 2d—(C. A. 5) decided 10/29/54; *N. L. R. B.* v. *Swinerton, supra*; *N. L. R. B.* v. *Whitin Machine Works, supra*; and *Kitty Clover, Inc.*, 103 NLRB 1665, 1680, enf'd 208 F. 2d 212 (C. A. 8).

Moreover, even on the basis of Respondent's claim that Henry was discharged because of her activity in protesting the proposed remodeling to Crosby, she did so as spokesman for the girls in the Security Fund office and this constituted concerted activity for the mutual aid or benefit of the employees, inasmuch as the proposed remodeling was anticipated by the employees as likely to adversely affect

their working conditions, as in fact it temporarily did. Nor did her contacting of Crosby constitute insubordination, for Henry had first spoken to Earhart, had achieved no satisfaction, and had then proceeded to the official who was a trustee of at least eight trusts administered by the Security Fund office. I find therefore that her discharge for engaging in this activity independently constituted conduct violative of Section 8 (a) (1) of the Act. *Salt River Valley Water Users Assoc.* v. *N. L. R. B.*, 206 F. 2d 325 (C.A.9);

N. L. R. B. v. *Phoenix Life Insurance Company*, 167 F. 2d 983, 987 (C.A.7) cert. denied 335 U. S. 845. *Modern Motors, Inc.* v. *N. L. R. B.*, 198 F. 2d 925 (C. A. 8); *N. L. R. B.* v. *Smith Victory Corp.*, 190 F. 2d 56 (C. A. 2); *Standard Coil Products Co.*, 110 NLRB No. 61; Mac Smith Garment Co., 107 NLRB No. 27; *Rugcrafters of Puerto Rico, Inc.*, 107 NLRB No. 72; and *Lloyd A. Fry Roofing Co.*, 109 NLRB No. 191.

I do not deem Crosby's participation herein as binding upon Respondent International or Respondent Sweeney and accordingly recommend that the case against them, in this respect, be dismissed.

I further find that Earhart's discharge of Henry strongly demonstrated to employees of Security Fund that adherence to and support of Local 11 and honoring the subpoena of the General Counsel herein constituted activity which would be met with strict and prompt reprisal. It is inevitable that her discharge constituted encouragement of and assistance to Local 223 of the strongest sort and aided the organizational efforts of that organization. Earhart was well aware of these organizational efforts and moreover, the record discloses that Earhart knew Henry to be an outspoken opponent of Teamster Local 223. Nor does it constitute a defense to Respondents that Earhart may not have expressly intended by the discharge to render assistance to

Local 223; that result inevitably follows. *Radio Officers Union* v. *N. L. R. B.*, 347 U. S. 17. I find that her discharge constituted assistance to and support of Local 223, within the meaning of Section 8 (a) (1) and (2) of the Act, but not domination thereof, as alleged.

5. Mary Ermence

The complaint in Case 36-CA-648 alleges, *inter alia*, that Security Fund and its administrator, William C. Earhart, both named as Respondents, discriminatorily discharged Mary Ermence on August 16, 1954, within the meaning of Section 8 (a) (1), (3), and (4) of the Act. It also alleges that Respondent International and its agent International Representative Sweeney instructed the aforenamed Respondents to carry out the discharge of Ermence, thereby violating the same sections of the Act. It is further alleged that this conduct by the above-named Respondents, as in the discharge of Marian Henry, constituted unlawful domination of and support to Teamster Local 223 within the meaning of Section 8 (a) (1) and (2) of the Act.

Ermence entered the employ of Security Fund in September 1950 as Claims Manager and, at the time of her discharge on August 16, 1954, had the highest seniority in the office. At the time of her hiring, the complement of personnel including Ermence totaled five or six, and as heretofore found, she was, until April 1, 1954, a supervisory employee. Prior to the hiring of Earhart on April 1, Security Fund had been under the direction of a succession of Teamster officials who devoted but a portion of their time to the office. The record does not disclose how substantial this time was and there is no evidence that these part-time administrators received a salary in addition to their remuneration from Teamster organizations. During this period, Ermence hired employees for the Security Fund office and also procured them for other organizations in the building. When Earhart came upon the scene, the total complement of personnel including Ermence was approximately 10. Her

salary remained at $100 per week thereafter, although the highest salary paid the other employees of Security Fund was not in excess of $70 per week, and in some cases as low as $55.

Ermence was on vacation during the week of August 9 and therefore was absent on Friday, August 13, when Marian Henry was discharged by Earhart. Ermence returned to work on Monday, August 16, and was greeted

by Earhart, who promptly asked for her resignation. Ermence refused and asked for a reason, pointing out that she had been a devoted and loyal employee. Earhart replied that he had lost his faith in her. Earhart admitted that he refused to supply her with a reason and proceeded to discharge her.

A primary issue herein is whether or not Ermence was a supervisor within the meaning of the Act at the time of her discharge. The precise question is whether her duties, admittedly supervisory prior to the advent of Earhart, changed sufficiently thereafter so as to change her status to that of a rank-and-file employee. There is no doubt that some change was wrought in her situation. For all practical purposes Ermence had run the office some of the time before Earhart was hired. And, after Earhart was hired at an undisclosed salary, there is no doubt but that he proceeded to run the office. This was a full-time position for Earhart and moreover, as he testified, his absences from the office were slight, averaging approximately one-half day a week; these apparently were short absences of one hour or longer, although once in a great while he would be required to go out of town for a few days.

Thus, Earhart ran the office, but Ermence, as I find, was not relegated to the status of an ordinary rank-and-file employee. The issue is, and I deem it a close one, whether

or not she retained sufficient supervisory duties as to warrant the conclusion that she remained a responsible representative of management.

The record of the period that elapsed between April and August of 1954 demonstrates that Earhart relied upon Ermence to orient him in the problems of the office, but nevertheless did take a firm grasp of matters and forcefully went about making drastic changes. These included the remodeling operation discussed above as well as the installation of a new filing system, both of which were measures he determinedly carried out despite the opposition, whether sound or not I deem unnecessary to determine, of many girls in the office.

Ermence testified, and I find, that Earhart, soon after taking over, informed her that her duties were to be primarily clerical; however, this did not prove to be quite the case. The operation of the office consists basically of processing claims for benefits under the health and welfare plans. The job is broken down into a number of steps which are carried on at different desks in the office. It appears that these operations require a minimum of supervision, if any, and that the girls were pretty much competent to handle their duties by themselves. However, the problem did arise that work of a particular sort would occasionally pile up on a desk. Then, in order to avoid a bottleneck, it became necessary for other employees to devote themselves to this particular operation. Ermence would distribute the work to the appropriate desks and would work herself wherever her services were most required.

As for working area, she and Earhart, shared an office from April 1 on. In the remodeling operation, which started late in July and concluded just before her discharge, the net effect was to reduce a larger number of rooms to a total of three, namely one large office for all the girls and two small ones for Earhart and Ermence. Earhart informed Ermence, as she testified, that he desired a pri-

vate office in order to have private conversations with the employees and that he wished her to have the office next to him so as to "direct the work out to the different desks."

There is evidence that in several instances during the April-August period Earhart handled the hiring or inter-

viewing of prospective employees. They were directed to his office and he in turn asked Ermence to sit in on the interview and ask some technical questions on office procedure. After the interview was complete, Earhart would solicit Ermence's opinion as to the qualifications of the complaint.

During May, an employee of Security Fund, Tombe, was discharged for incompetency. According to Ermence, Earhart raised the matter and complained to her about Tombe's lack of knowledge on a certain matter; he then asked for Ermence's opinion of Tombe's work. Ermence gave her opinion, apparently unsatisfactory, and suggested that Earhart contact the auditor, repeating a comment previously made by the auditor about Tombe's work. Thereafter, Earhart did confer with the auditor and inform Ermence that he had decided to discharge Tombe. Earhart testified that he did give weight to the views of Ermence in this and other matters and that he "placed a great deal of confidence in the opinion expressed by Mrs. Ermence in any of the problems we were talking about, either in regard to hiring or firing." He claimed that he placed more weight on her views than on those of anyone else in the office.

In sum, the case of Respondents reduces itself to a claim that Earhart relied heavily upon Ermence and gave effective consideration to her views on hiring and firing as well as on raises in pay for employees. The claim of the General Counsel, in effect, is that Ermance was a senior employee who was in the nature of a lead lady at best but not a supervisor.

A number of recent cases tend to support the position of the General Counsel herein. These cases deal with analogous but not closely similar positions. See, e. g., *Poultry Enterprises* v. *N. L. R. B.*,—F. 2d—decided 11/24/54 (C. A. 5) where the Court pointed out that "occasional performance of supervisory duties does not make an employee a supervisor within the meaning of the Act." This decision also cited with approval a number of Board holdings to the effect that "sporadic exercise of some supervisory authority, but not the full duties and responsibility of the regular supervisor, during the latter's absence, did not constitute one a supervisor."

In *Precision Fabricator, Inc.* v. *N. L. R. B.*, 204 F. 2d 567 (C. A. 2) the Court pointed out that a so-called "room boss" who made routine work assignments did not, in so doing, have independent judgment and was not a supervisor. Similar views were taken in the following decisions. *N. L. R. B.* v. *Parma Water Lifter Co.*, 211 F. 2d 278 (C. A. 9) cert. denied 10/15/54; *N. L. R. B.* v. *Whitin Machine Works*, 204 F. 2d 883 (C. A. 1); *N. L. R. B.* v. *Quincy Steel Casting Co.*, 200 F. 2d 293 (C.A.1); *N. L. R. B.* v. *North Carolina Granite Co.*, 201 F. 2d 469 (C. A. 4); *N. L. R. B.* v. *Beaver Meadow Creamery*, 215 F. 2d 247 (C. A. 3); and *N. L. R. B.* v. *Valentine Sugars, Inc.*, 211 F. 2d 317 (C. A. 5).

Similar views were expressed by the Board, in finding an absence of supervisory authority, in *Doak Aircraft Co., Inc.*, 110 NLRB No. 124; *Eagle Iron & Brass Co.*, 110 NLRB No. 123; and *Miami Paper Board Mills, Inc.*, 109 NLRB No. 31. In not too different circumstances, however, the Board found that supervisory authority did exist. *Dura Steel Products*, 109 NLRB No. 18; *Legion Utensils Co.*, 109 NLRB No. 187; *Beneke Corporation*, 109 NLRB No. 167; *Gen Pro, Inc.*, 110 NLRB No. 7; and *Colonial Fashions, Inc.*, 110 NLRB No. 193.

I have given considerable thought to the problem and, as indicated, I consider the decision a close one. The burden

of the General Counsel, however, is to prove his point by a preponderance of the evidence; in my view, the evidence stacks up fairly even and, therefore, the General Counsel has not preponderated herein. In view of Ermence's having

been placed in a separate office, on a level or near level with Earhart in the eyes of employees; her being retained in the same substantially higher salary bracket she had enjoyed as a supervisor; her participation in the hiring of employees; her role, even on her own testimony, in the discharge of Tombe; and Earhart's uncontroverted testimony that he did give substantial and effective weight to her recommendations on wage raises as well as in other matters, which is supported by evidence of instances when he confided in her, I conclude, although not free from doubt, that the evidence does not preponderate in favor of a finding that the duties of Ermence had changed sufficiently from those she enjoyed at the time she admittedly was a supervisor so as to render her a nonsupervisory employee within the meaning of the Act at the time of her discharge.[16]

This however is not the end of the problem. For, as Earhart's counsel correctly informed him when Earhart sought his advice some time between August 11 and 13 prior to the discharge of Ermence, supervisors at times are still subject to the protection of the Act. The record demonstrates for the reasons set forth below that his counsel's advice was correct and that this was in fact an occasion when the supervisor was protected.

Ermence, it will be recalled, was one of four girls under subpoena by the General Counsel at the original hearing on July 21 who were directed to return on July 22. As

---

[16] While it may well be that Earhart ultimately, as he acquired additional experience, might have whittled down the job of Ermence to a true nonsupervisory one, this was not done by August 16. And while Ermence signed a card for Local 11 in July of 1954, she had done likewise for Local 223 in 1953, a time when her supervisory status is conceded.

demonstrated, the other three were discriminatorily discharged on July 29 and August 13. The record does not disclose that Earhart bore any animus directed to Ermence on July 22, perhaps because his conduct in confiding in her indicated that he considered her sympathetic to Teamster interests, but, as set forth, his statements to Ermence clearly reveal the interpretation he placed upon the presence of Marian Henry, an employee of Security Fund, at the hearings on July 21 and 22. Thus, Earhart criticized Henry as associating with the General Counsel and the "enemy," namely counsel for Local 11, who were presenting a case in support of charges by Local 11 against various Respondents, including Security Fund.

The record discloses that shortly prior to the discharge of Ermence, Earhart was in receipt of information which could well have caused him to reassess the situation relative to Ermence. Thus, on August 6, Earhart, as found, informed Marian Henry that he had been informed by Teamster officials that she, Henry, was upset over the discharge of Olstad, heretofore found to be discriminatory. At the conclusion of this talk, Earhart warned her to stay out of international politics in the building. It was during this talk that Henry informed Earhart that Ermence had become ill over the discharge of Olstad and had left work as a result. Again, on August 13, the day Earhart discriminatorily discharged Henry, reference was made to Henry's alleged insubordination in talking to Crosby about the remodeling project. It is significant that in this talk, as Earhart admitted herein, Henry informed him that Ermence was on advance notice from Henry that she, Henry, proposed to speak to Crosby about the remodeling project.

Although Earhart testified that he decided to discharge Ermence during the week-end before Monday August 16, the record demonstrates that Earhart had the matter under prior consideration, namely at about the same time that he discriminatorily discharged Henry on August 13. For, as

he testified, he called his counsel relative to the extent of protection from discharge that a supervisor had under the Act, on a date he placed between August 11 and August 13. However, Ermence was not at work on August 13 and therefore was not available for discharge in person.

Turning to the one reason advanced by Earhart for the discharge of Ermence, a consideration of his testimony discloses that it was actually no reason at all. He claimed that he lost faith in her because he, Earhart, did not know what was going on in the office. He did not enlighten Ermence or this record as to what he, Earhart, should have known about the office and at this stage I am still unaware of what he referred to. He flatly refused to supply Ermence with a reason for her discharge. His testimony that he informed her he no longer had any "faith" in her stands unexplained, because there is no evidence that he at any time expressed any displeasure to Ermence over office matters not brought to his attention. Nor did he ever explain to her what was to be brought to his attention.

The most logical conclusion that manifests itself and, in fact, just about the only one that the evidence herein points to is that on or about August 13, at the time Earhart discriminatorily discharged Henry, as found above, because of her association with the General Counsel while under subpoena for the presentation of testimony in this case, Earhart concluded that Ermence, in whom he had previously closely confided his discriminatory motivation toward Henry, was apt to render the same service to the General Counsel as Henry by presenting testimony which would support the General Counsel's case against Respondents herein. I so find. Entitled to weight in arriving at this conclusion is Ermence's tenure and experience, the reliance Earhart admittedly and openly displayed in her ability to handle office matters, and the great extent to which he con-

fided in her. In the face of all this, there is simply no evidence in support of Earhart's claim herein. Earhart's loss of faith or confidence in Ermence can, on this record be equated only with a conclusion on his part that Ermence would present adverse testimony at a later stage of this hearing.[17] I believe and find, that, but for this conclusion by Earhart, Ermence would not have been discharged.

Conclusions

All employees have the right of access to the processes of the Board and the right, if not duty, to testify in aid of a proceeding brought by the General Counsel against any invasion of their right to organize, which is guaranteed by public policy. As found, Ermence was not a rank-and-file employee. She was, however, under subpoena by the General Counsel and attended the hearings on July 21 and 22 quite obviously as a prospective witness for the General Counsel in the litigation of the alleged unfair labor practices by Security Fund and the other Respondents against rank-and-file employees who do have the full protection of the Act. The sole issue here is whether, by her discharge, Respondent Security Fund has interfered with, restrained and coerced the self-organizational rights of these other employees. I believe and find that it did. This is not, I might add, a case of divided loyalties in which event the conduct of Security Fund with respect to Ermence would be viewed differently. See, e. g., *Texas Co.* v. *N. L. R. B.*,

198 F. 2d 540 (C. A. 9).

I find that the discharge of Ermence, following directly on the heels of the other discriminatory discharges of the

[17] In fact Ermence concretely manifested this to International Representative Sweeney just prior to July 21 or 22 as appears below. However, although Sweeney was a regular visitor to the Security Fund office, there is no evidence that he discussed Ermence's termination with Earhart.

prospective witnesses of the General Counsel and particularly so, on the next work day after Earhart discriminatorily discharged Marian Henry for substantially the same reason as Ermence, plainly demonstrated to rank-and-file employees that her discharge was but a part of a plan to thwart their self-organizational activities. The net effect of this conduct would logically cause rank-and-file employees reasonably to fear that Security Fund would take similar action against them if they rendered similar obedience to a Board subpoena. I find that the discharge of Ermence constituted an invasion of the self-organizational rights of rank-and-file employees.

Stated in simplest terms, the case of Ermence involves, in its most direct sense, an attempt to prevent the Board from carrying out the Congressional policy entrusted to it, by procuring the attendance of witnesses at a Board hearing and by recording their testimony in the prescribed manner. A discharge intended or reasonably calculated to prevent the accomplishment of this policy inevitably restrains and coerces employees in the exercise of the rights guaranteed by the Act because it demonstrates to them that should they venture to testify concerning the unlawful conduct of their employer, they, in turn, may bring down upon themselves the extreme penalty of discharge. I find that the discharge of Ermence by Security Fund and its administrator, Earhart, under the circumstances present herein, inevitably constituted such a demonstration to the rank-and-file employees. *N. L. R. B.* v. *Talladega Cotton Factory, Inc.*, 213 F. 2d 209 (C. A. 5), and *N. L. R. B.* v. *Vail Manufacturing Co.*, 158 F. 2d 664 (C. A. 7), cert. denied 331 U. S. 835. Although the latter case was decided after the amendments to the Act, the former case clearly shows that no change was made in this respect.

As the court aptly pointed out in the *Talladega Cotton Factory* decision, "we see no reason why the Board in the exercise of its statutory discretion does not have the same remedial power to redress acts of indirect interference and

restraint of ordinary employees through the discharge of supervisors, as it admittedly has to redress acts of direct interference and restraint with the right of the same employees to uninhibited self-organization." The Court went on to say that a contrary claim "evinces undue preoccupation with the statutory definition [of supervisor] rather than with the underlying purpose and intent of the Act as a whole . . . ."

In view of the foregoing considerations, I find that Security Fund and its administrator, Earhart, have by the discharge of Ermence on August 16, 1954, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) thereof. I shall recommend the dismissal of the allegations against those Respondents insofar as they relate to Section 8 (a) (3) and (4) of the Act inasmuch as those Sections are directed to protection of employees in the direct sense.[18]

1706

For the reasons heretofore stated in considering the discharge of Marian Henry, I find that the discharge of Ermence constituted assistance to and support of Local 223, within the meaning of Section 8 (a) (1) and (2) of the Act, but not domination thereof, as alleged. In addition, there being no evidence that Respondent International or Respondent Sweeney directed, ratified or cause the discharge of Ermence, I shall recommend that the case against them, in this respect, be dismissed.

---

[18] Of course, in the event that the Board concludes that Ermence was not in fact a supervisory employee at the time of her discharge, the record well warrants a finding that her discharge was violative of Section 8 (a) (3) and (4) of the Act as well, for the reasons previously stated herein in considering the cases of the three girls whose discharges shortly preceded hers. In addition, should it appear on her reinstatement that her duties have nondiscriminatorily become solely those of a rank-and-file employee, she would then be subject to the protection of the Act within the meaning of Section 8 (a) (3) and (4).

6. June Cook

The complaint in Cases 36-CA-637, 638, and 639, further alleges that Respondent Local 206, on or about June 10, 1954, discriminatorily discharged June Cook because of her activities in behalf of Local 11, thereby violating Section 8 (a) (1) and (3) of the Act. The case of Cook is *sui generis* and in most respects involves considerations other than those present in the four cases heretofore discussed. Cook was one of two office clericals in the employ of Local 206. Financial Secretary Estabrook, who had hired her six and one-half years previously, asked her to resign on June 10, 1954. Cook, an impressive and straightforward witness, testified that on June 10 Estabrook asked for her resignation, stating that after conferring with Mrs. Crosby, the other office clerical and the wife of Clyde Crosby heretofore identified, he, Estabrook, had decided that Cook "was not qualified to do the work." According to Estabrook, he asked her to resign, stating that most of her work had been eliminated. I credit Cook's testimony here as elsewhere.

The General Counsel contends that Cook was discharged on June 10, 1954, because of her union sympathies and activities starting in 1953, after many months of maneuvering by Estabrook to eliminate her from his employ. Respondent Local 206 claims that she was discharged because of technological changes resulting from the installation of a new bookkeeping machine which eliminated a substantial portion of her duties as cashier and bookkeeper. Although the case of the General Counsel in this situation is not as strong as those of the four heretofore discussed, the defense of Respondent herein impresses me as singularly weak for reasons which follow.

Cook had been a member of Local 11 since sometime in 1947. During June of 1953, Financial Secretary Estabrook spoke to Cook and informed her that he was on the spot because someone had informed International Representa-

tive Sweeney that Cook had refused to join a Teamster local. Later that day, Estabrook gave Cook and Mrs. Crosby, the other office clerical, applications for Local 223 with instructions to fill them out and return them to Sweeney. Cook did so. In the latter part of June 1953 she was initiated into Local 223 in the presence of Crosby and Sweeney. One or the other of the two promised that the girls present would receive withdrawal cards from Local 11.

As indicated, Local 11 attempted early in 1953 to obtain another collective bargaining agreement from the various Teamster organizations in the Teamster building, consistent with their traditional representation of office employees in the building. Secretary-treasurer Beyer of Local 11 was greeted with evasive treatment by both Crosby and Sweeney, each of whom took turns evading responsibility in the matter and shunting Beyer to the other. Ultimately, negotiations broke down early in July of 1953 and Local 11 picketed the building during a 2-3 week period late in July and early in August with little or no effect.

On the first day of the picketing, a number of girls employed in the building refused to cross the picket line. After about 15 minutes, their respective employers appeared on the scene and directed them to report to work.

1707

The girls promptly obliged with the exception of two, Cook and Irene Manning; the latter was employed by four locals in the building, Local 223, and three others which are not involved herein. They remained outside the picket line for about 1 hour and then entered the building. It is this episode on which the General Counsel relies in attributing Cook's ultimate fall from grace with Local 206 after joining Local 223 and being initiated therein.

Cook took her 2-week vacation immediately after the foregoing episode, and, upon her return, noticed that Estabrook did not speak to her for 2 weeks. He broke the silence

thereafter, sometime in August, and proceed to ask for her resignation, stating, as Cook testified, that she "had put him on the spot . . . the picket line had caused quite a bit of trouble, and with me not going through it, that had caused him trouble." Cook replied that she would think it over and nothing further was done. However, Cook had been promised a raise by Estabrook prior to leaving on her vacation. This she did not receive, although, one day after her return from her vacation, a raise was given to Mrs. Crosby as well as to two assistant business agents in the office. In October of 1953, Estabrook again brought up the subject of her resignation, stating that if she would work until October 20 and resign at that time he would pay her salary through the month of November. He did not specifically advert to any reason for desiring to terminate her employment on this occasion, and Cook refused to resign.

Nothing further happened until the morning of June 10, 1954, when Estabrook again asked for her resignation, stating that he had conferred with Mrs. Crosby and that he had concluded that Cook "was not qualified to do the work." Estabrook said that, in the alternative, she could remain only until August 1, 1954, if she chose. Cook decided to leave, stating that she did not wish to stay until that date if she was not wanted. I find that she was in fact discharged on June 10, 1954, by Estabrook. This conversation constituted a final act on his part, for the alternative of working until August 1, as Estabrook posed it, left no option to Cook but to accept termination on the latter date for the same reason expressed by Estabrook on June 10, 1954. If the reason was discriminatory on June 10, 1954, Cook was not required to continue for some weeks under this discriminatory cloud with no avenue of escape open to her. *N. L. R. B.* v. *Newton*, 210 F. 2d 472 (C. A. 5). The following day, June 11, Cook was replaced by one Tombe, a bookkeeper discharged in May by Security Fund for in-

competence, including being a "sloppy" typist, as Earhart testified.

Respondent's primary contention herein is that the installation of a bookkeeping machine substantially reduced Cook's work. It is true that a bookkeeping machine was installed in the office of Local 206 in mid-April of 1954. In fact, similar machines were installed throughout the Teamster Building and there is no evidence that this mechanical change rendered any other girls in the building superfluous. Prior to the installation of the machine, the work was divided between Mrs. Crosby and Cook. The former did the bookkeeping, wrote out the checks, sent out contract notices to employers, and handled Estabrook's dictation and correspondence. Cook's duties were to wait on the window and receive dues payment paid in person by some of the large membership of 2,750 in this Local. She also handled the mail, and this included the receipt of dues payments by mail. Her duties, prior to the installation of the bookkeeping machine, required her to make out a receipt for the dues payment and post it on a ledger card; all items from the receipt book were also recorded by her in the day book. This posting took from one-half to two-thirds of her time. She also had the responsibility of keeping addresses and mailing lists for two publications up to date, these being the Teamster paper and the International

magazine. In addition, she maintained the records of initiations and withdrawal cards issued to departing members.

After the installation of the machine, some of Cook's duties were eliminated. The machine did the actual posting, although Cook still had to punch and operate it. While the record discloses that the installation of the machine reduced Cook's duties in some degree, the record will not support a finding that its installation was a leading cause in bringing about her termination.

As demonstrated, Estabrook had been attempting to induce Cook to resign as far back as August of 1953 and again in October of that year. The presence of the machine obviously could not have been a factor in his engaging in such conduct at that time. Although Estabrook testified that the installation of the machine was under consideration for 6 to 8 months previously, the fact is that he tried to bring about the discharge of Cook long prior to its installation. Previously why he was reluctant to discharge her outright, the record does not disclose, whether because of her tenure, competence, or the fact that her father and Estabrook had long been friends. Moreover, in her terminal conversation with Estabrook on June 10, 1954, Cook had informed him that she had done the work customarily done by Mrs. Crosby when the latter was on vacation, thus demonstrating her versatility in the office. Estabrook did not comment on this. Nor was Mrs. Crosby, obviously well qualified to testify in the matter, called as a witness, although presumably available.

Respondent raises another reason herein, namely, the claim that Cook was out of practice on typing and shorthand and that, as a result, she did not perform these operations in the office. The record does disclose that when Cook was hired, Estabrook was on notice from Cook that she was out of practice in taking dictation.

Estabrook had offered on several occasions to pay her expenses to night school so that she could brush up on her shorthand, but Cook declined, stating, as was apparently the fact, that there was not enough work of this nature in the office to warrant her doing so; Cook pointed out to Estabrook that Mrs. Crosby handled all the dictation. Indeed, Cook testified that Estabrook last took up the question of night school with her approximately *2 years prior* to the date of her testimony herein on September 16, 1954. She was positive that there was no such conversation during the year preceding the date of her discharge. Estabrook

claimed that there had been such a conversation after the installation of the bookkeeping machine came under consideration.

Here, as well, Estabrook's testimony is not accepted. In addition to placing reliance on Cook's demeanor in crediting her, a consideration of the testimony of Estabrook serves only to further buttress Cook. He testified concerning an inquiry he allegedly made of Mary Ermence when he hired Tombe as a replacement for Cook and claimed that Ermence said that Tombe could do the work. Ermence, credited elsewhere, denied that he ever made any inquiry about Tombe. In addition, when being questioned as to why the girls working for Local 206 chose Local 223 in 1953 as a bargaining representative, at a time when he, Estabrook passed out the cards, Estabrook attributed this to the reason that Secretary Hildreth of Local 223 was the best looking man in the building; however, Hildreth did not become an official of Local 223 until February of 1954.

Noteworthy here as well is the fact that Estabrook on the following day, June 11, hired Tombe for Cook's job. Yet Earhart, her prior employer in Security Fund, who had discharged her late in May of 1954, had concluded not

only that she was incompetent, but that her work was "sloppy," specifically so characterizing her typing. In fact, Earhart testified that she took no dictation and did not do "a great deal" of typing for Security Fund. But Earhart, as he testified, was contacted by Estabrook, who asked him about her qualifications and "indicated that she would be put to work in the building." There is nothing in his testimony to indicate that Earhart was anything but truthful with Estabrook on this occasion. Estabrook claimed that Ermence and Earhart both said she would be able to handle the work he had for her, but, as indicated, I credit Ermence's testimony that the topic was not raised by Estabrook with her.

Estabrook claimed that Tombe was doing substantially the same work that Cook had done, but that she had taken over some of Mrs. Crosby's work, involving occasional dictation, running the mimeograph machine, cutting stencils, and preparing contracts. He estimated that no more than 50 percent of Mrs. Crosby's time was taken up with dictation. It is significant that there is no evidence that Cook was not qualified to handle at least the last three of the four categories mentioned by Estabrook. As to the other category, Estabrook testified that Mrs. Crosby assigned Tombe such dictation and typing that she could not handle herself, and that Crosby reported to him that Tombe was working out well. However, as indicated, Mrs. Crosby did not testify herein.

On balance, I am not impressed with these defenses of Respondent. In Cook, Estabrook had an employee of 6½ years' tenure, who received a number of salary increases from Estabrook, and whom he admittedly had found to be "very capable . . . Mrs. Cook was excellent in the job of taking dues and in her posting. She did an excellent job." He added that she wrote an unusually fine hand. Why then, with the advent of the bookkeeping machine, was so competent an employee discarded and replaced with one unsatisfactory elsewhere in the building?

The answer appears when note is taken of the fact that Estabrook had been attempting to eliminate Cook from his employ *long before* the advent of the bookkeeping machine, and that his concern over her lack of shorthand was relatively ancient history. Although Estabrook's attempts to force her resignation were protracted over a long period of time, and this factor is indeed somewhat puzzling, a preponderance of the evidence impels the conclusion that one must look to events in 1953 for the cause of her discharge.

Cook was an employee of long tenure, who had received a number of wage increases from Estabrook. There had

been no criticism of her work whatsoever. Estabrook's satisfaction with Cook took a marked change when the picket line incident occurred in 1953. Immediately thereafter he did not speak to her for 2 weeks and withheld a wage raise previously promised, although it was given to the other employees in the office. That her respecting of the picket line was the cause of his dissatisfaction, he made quite clear when, during August, not long after the incident, he specifically asked her to resign, pointing out that it was her picket line activity that had put him on the spot. In fact, he admitted herein that her conduct on this occasion had embarrassed him and that he told her she had acted improperly. His subsequent attempts to induce her to resign were nothing more than repetitions of his earlier conduct, which was clearly related to her picket line activity.

I find, on a preponderance of the evidence, that this picket line activity was the true cause for her discharge, because it reasonably indicated that Cook's loyalty to and support of Local 223, the organization which Estabrook openly favored, was open to serious question, and that the assigned

reasons were not the true reasons for her discharge. *N. L. R. B.* v. *Vail Manufacturing Co.*, 158 F. 2d 664, 6 (C. A. 7) cert. denied 334 U. S. 845. I find that by discharging June Cook on June 10, 1954, Respondent Local 206 has discriminated with respect to her hire and tenure of employment, thereby encouraging membership in Local 223 and discouraging membership in Local 11, and violating Section 8 (a) (3) of the Act. I further find that her discharge under the foregoing circumstances interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) thereof. See, *Bausch & Lomb Optical Co.* v. *N. L. R. B.*,—F. 2d—(C. A. 2), decided 12/1/54.[19]

D. *The Refusal to Bargain*

1. The Appropriate Unit and Majority Representation Therein

The complaint in Case 36-CA-648 alleges that Security Fund and Earhart refused to bargain with Local 11 as the representative of its employees in an appropriate unit. It alleges that all office and clerical employees of Security Fund, constituting its entire complement of personnel, excluding supervisors, constitute a unit appropriate for the purposes of collective bargaining. Although the answer of Respondents generally denies the appropriateness of this unit, Respondent has posed no active challenge to it on any ground. I find that the unit set forth in the complaint is a unit of the type customarily found appropriate by the Board in analogous cases and that it indeed constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. See *Texas Prudential Insurance Co.*, 109 NLRB No. 34.

The complaint further alleges that Local 11 represented the employees in the above-described appropriate unit on and after July 14, 1954. Turning to the actual composition of the unit, the parties in effect agree that as of July 14, there were 11 named employees in the unit. There is no problem as to 8 of the 11; the remaining 3 are Mary Ermence, Marian Henry, and Corinne Paullin. Ermence, as I have found, was a supervisor, and is therefore excluded from the unit.

Henry, as found, was discriminatorily discharged on August 13, 1954, and therefore retained her status as an employee and is included in the unit. If the Board should conclude that Ermence was in fact a rank-and-file employee during this period, she, as well, is to be included in the unit for the same reason as Henry. As to the third, Paullin, Earhart testified, on September 17, 1954, that Paullin had been on a maternity leave of absence since July 15, 1954, that she had had her child, and that she was due to return

on September 20. It is clear, and I find, that at the time material herein, namely July and August of 1954, Paullin had a reasonable expectation of continued employment and she is therefore to be included as an employee within the unit. Earhart further testified, and I find, that there were no hirings between July 14 and August 23. One other employee, Courtain, was hired at an undisclosed date either several days before or several days after August 23. I find therefore, that there were 10 employees, this figure including Henry and Paullin but excluding Ermence, in the unit between July 14 and August 23, 1954.

1711

As evidence of the majority representation of Local 11 in the appropriate unit, the General Counsel introduced in evidence cards signed by 9 of the 10 employees in the unit, not including Ermence, on dates between July 12 and 16 and the other 3 on August 2, 10, and 11. These cards were circulated in the building by Marian Henry, as heretofore set forth, during this period. They appeared to be in order and their authenticity was not challenged by Respondent, which did not object to their receipt in evidence. One of them, it may be noted, was signed by Patricia Schlaht at her home, and she identified her signature.

While Security Fund has made no specific contention in this regard, it did adduce testimony to the effect that a number of the employees of Security Fund were also members of Local 223. This presumably was to establish that Security Fund employees had signed dual designations, this serving to vitiate the designations of Local 11. To accept such a view, however, would be to utterly disregard the

[*] Respondent points out that Manning, who also respected the picket line in the same manner as Cook, was not discharged. However, she was not an employee of Local 206 or of Estabrook. Moreover, the fact that all persons in the same category are not subjected to discrimination does not constitute a defense to an act of discrimination. *N. L. R. B.* v. *Link Belt Co.*, 311 U.S. 584, 602; *N. L. R. B.* v. *W C. Nabors Co.*, 196 F. 2d 272 (C. A. 5), cert. denied 344 U.S. 805; and *Toledo Desk and Fixture Co.*, 65 NLRB 1086, 1108.

unfair labor practices heretofore found whereby Local 223 achieved its representation in the building and specifically among the employees of Security Fund in 1953.

Secretary Hildreth, of Local 223, testified that all but three of the Security Fund employees were dues paying members of his organization; the three exceptions were Ermence, Henry, and Heerman. It is significant, however, that none of the employees working for Security Fund joined Local 223 subsequent to July 12, 1954, the earliest date that cards were signed for Local 11 in 1954, with the exception of one Carter, and she was the only one of the Security Fund employees who did not join Local 11.

I have heretofore set forth how Mary Ermence, as office manager of Security Fund in 1953 had solicited membership for Local 223, passed out applications, picked up signed applications, uttered thinly veiled threats of economic reprisal for failure to sign up with Teamsters, and promised the employees benefits for affiliating with Teamsters, this conduct being violative of Section 8 (a) (1) and (2) of the Act. As a result, Local 223, which in January 1953 had no representation in the building, had by July of that year signed up all of the employees in the building but two or three, although the record discloses only the history of this activity at Security Fund and Local 206. And, as Hildreth testified, those employees of Security Fund who belonged to Local 223, save Carter, had belonged since an undetermined date *in 1953*. In addition, as will later appear, Local 223 made its lone employee join in March of 1954.

The record discloses that of those on the payroll in June of 1953, only four, not including Ermence, were employed as of July 14, 1954. They are Foster, Henry, Wagner, and Schlaht. Of those, only Henry and Schlaht testified herein, the former for the General Counsel and the latter for Respondents. Their testimony was in substantial agreement as to the unlawful method whereby they became affiliated

with Local 223 in 1953. And all 4 had voluntarily signed cards in 1954 for Local 11. Moreover, the testimony of Ermence, well supported, amply demonstrates the unlawful method she employed in 1953, as a supervisor to introduce all the employees of Security Fund to representation by Local 223. Respondent offered no evidence as to the circumstances under which any others in the unit were signed up in Local 223 and they did not testify herein. I conclude therefore, on the basis of a preponderance of the evidence, and in fact the only substantial evidence before me, that the membership of Local 223 was acquired in large measure if not entirely on the basis of unfair labor practices which Security Fund cannot plead in its defense.

Respondent has not attempted to "disentangle the consequences for which it was responsible from those from which it was immune." *N. L. R. B.* v. *Remington Rand, Inc.*, 94 F. 2d 862, 872 (C. A. 2); *Franks Brothers Co.* v. *N. L. R. B.*, 321 U. S. 702, and *Medo Photo Corp.* v. *N. L. R. B.*, 321 U. S. 678

1712

Moreover, the fact that in the face of these unfair labor practices, the employees of Security Fund did thereafter sign up with Local 11 and all of them but one, as Henry testified, voluntarily paid dues prior to July 21, 1954, demonstrates that their 1954 designations are entitled to considerable weight and that they have not been detracted from or weakened.

I find therefore that as of July 16, 1954, Local 11 was the representative of six employees in the appropriate unit, a clear majority, and that this majority was increased to nine by additional signatures on August 2, August 10, and August 11. I further find that on July 16, 1954, and at all material times thereafter, Local 11 was and is the exclusive representative of the employees in the above-described appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

2. The Refusal to Bargain

There is no conflict as to what took place when Local 11 attempted to achieve recognition in 1954 from Security Fund. On July 27, Local 11 had a clear majority and Secretary Treasurer James Beyer wrote to Earhart. He advised him that Local 11 represented a majority of the employees of Security Fund and asked him to specify a mutually agreeable time and place for negotiations toward an agreement between Security Fund and Local 11. Earhart promptly telephoned his counsel herein, Richard Morris, advised him of this request, and mailed Morris a copy of the letter. He also instructed Morris to reply to the letter and informed Morris he would rely on his judgment in the matter.

Morris replied to Beyer on July 29, stating that the letter had been referred to him by Earhart and said that Security Fund would recognize Local 11 at such time as "the National Labor Relations should properly designate you as the bargaining agent of an appropriate unit of the employees. . . ." Morris testified that the responsibility for the text of this letter was his own, it being his practice and custom to recommend to clients that they insist upon a board certification before recognizing a labor organization as a collective bargaining representative, this being done in order to give the client more protection under the Act.

On August 18 Beyer wrote to Earhart again. The text is as follows:

> This letter is to advise you that Office Employes International Union, Local No. 11 herewith states that a proper bargaining unit of your operation is one composed of all office personnel employed by you in or about the situs of the Teamsters' Building at 1020 N. E. Third Avenue, Portland, 12, Oregon, exclusive of those employes in supervisory status.
>
> We further advise you that our Union, Office Employes International Union, Local No. 11, represents a majority

of all employees in such bargaining unit. We herewith request that you recognize our Union as the bargaining agent for all employees in said bargaining unit and further request that you reply immediately to this letter advising that you recognize our Union as the bargaining agent for all such employees in said bargaining unit. We herewith offer to submit to you documented proof that our Union does so represent and has been requested to bargain for a majority of your employees in such aforesaid designated bargaining unit and request that you enter into negotiations for the purpose of arriving

at a mutually satisfactory contract regarding hours of labor, wages and other working conditions and that you specify a time and place for such negotiations to be conducted.

On August 23 Morris replied to this letter stating that it, as well, had been referred to him. He stated, "You are again advised that if the National Labor Relations Board should determine that you are the designated bargaining agent for an appropriate unit of employees, you will be recognized by Mr. Earhart, Administrator, as such bargaining agent." As is apparent from the last exchange of letters, Local 11 offered to prove its majority to Security Fund and Morris, in his reply, did not challenge the majority representation of Local 11.

Conclusions

It is true that an employer entertaining a good faith doubt as to the appropriateness of a unit or the majority representation of a labor organization therein, may withhold recognition from that labor organization until it has achieved a certification through the processes of the Board. But such is not the case here simply because, as a matter of law, Respondent Security Fund cannot be found to have entertained a good faith doubt of this nature.

Morris was the agent of Security Fund and he may not in equity disassociate himself from the unlawful conduct of his employer. His conclusion, as he testified, that Local 11 might have been unlawfully assisted, related to certain alleged assistance extended to Local 11 *prior* to the advent of Local 223 on the scene in 1953. It has previously been demonstrated how Local 11 was ousted in all practical effect from the Teamsters Building in 1953. Without passing upon this relatively ancient matter, the fact is that this alleged unlawful assistance to Local 11 prior to 1953 was followed by unfair labor practices on the part of Security Fund which contributed substantial assistance to Local 223 in 1953. These, in all logic, could not help but dissipate any prior assistance given Local 11, assuming it to have been such. Moreover, one year later, and *subsequent* to the illegal assistance given to Local 223, there was an almost unanimous designation of Local 11 by the employees of Security Fund, as set forth above, which was entirely divorced from any employer participation. Indeed, all but one of those who signed cards for Local 11 in 1954 voluntarily paid dues prior to July 21, 1954. This is more than can be said for those who joined Local 223 in 1953 and thereafter paid dues in that organization.

What I deem to be of considerable weight herein, is the anomalous situation that would result were the unfair labor practices of Security Fund, committed by Earhart, to be disregarded. An acceptance of the position of counsel for Security Fund would require Local 11 to proceed to an election in the face of concurrent unfair labor practices violative of Section 8 (a) (1), (2), (3) and (4) of the Act; these were directed to the dissipation of its majority and to its very elimination from the scene. It is particularly significant that these concurrent unfair labor practices by Earhart were committed shortly after receiving the initial request from Local 11 and less than 1 week before Morris' second reply to Local 11 and consisted of the discharge of

two employees under subpoena at a Board hearing, Henry and Ermence, both found to be violative of the Act.

It would be difficult to think of conduct more likely to influence other employees of Security Fund from appearing at a subsequent representation hearing, or more likely to restrain those employees from registering their true sym-

pathies on the issue of union representation at the polls. And in all of this, it must be remembered that Security Fund and its counsel did not dispute the majority representation of Local 11 and in fact ignored its offer to prove this majority to the satisfaction of Security Fund.

While I do not doubt that Morris personally acted in good faith, equity requires that the onus of wrongdoing fall upon the perpetrator thereof rather than on the innocent victim. *N. L. R. B.* v. *Remington-Rand, Inc.*, 94 F. 2f 862, 872 (C. A. 2). The simple fact is that Security Fund is assessable with the conduct of its two agents, Earhart and Morris. *Safeway Stores, Inc.*, 110 NLRB No. 242. While one put off the majority representative and ignored its offer to prove its majority representation, the other engaged in unfair labor practices demonstrating marked hostility to the principles of collective bargaining, designed to undermine the majority of Local 11, and demonstrating an utter disregard of the processes of the Board. The Board and the courts have long recognized the inequity of requiring employees to register their views at the polls under such circumstances.

A court has stated in analogous circumstances, "It is true that the union upon meeting such refusal to bargain first adopted the course of filing a representation petition for certification by the Board under Section 9 of the Act. Later this representation petition was dismissed at the union's own request. But the right of employees to bargain collectively through an exclusive bargaining representative is not conditioned upon an antecedent certification by the Board where, as here, the majority status of the union is

clearly established otherwise, and the employer has no bona fide doubt of such majority status, but seeks to delay bargaining negotiations while resorting to various coercive tactics designed to dissipate the union majority support . . . ." *N. L. R. B.* v. *Ken Rose Motors, Inc.*, 193 F. 2d 769 (C. A. 1).[20]

In view of the foregoing findings, I find that Respondent Security Fund and Respondent Earhart in denying recognition to Local 11 on July 29, 1954, and thereafter, as the representatives of its employees in an appropriate unit, have refused to bargain with Local 11 within the meaning of Section 8 (a) (5) of the Act, and by such conduct have interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed by Section 7 of the Act, thereby violating Section 8 (a) (1) thereof. *N. L. R. B.* v. *Howell Chevrolet Co.*, 204 F. 2d 79 (C. A. 9), affirmed 346 U. S. 482. The Court in the last-cited case stated, in a similar situation, "We think that the evidence abundantly supports the Board's findings that the respondent did not withhold its recognition of the union because of a good faith doubt of the Union's majority, and that its conduct generally was motivated by a desire to gain time in which to destroy the Union's majority. See also *N. L. R. B.* v. *W. T. Grant Co.*, 199 F. 2d 711 (C. A. 9); *N. L. R. B.* v. *Star Beef Co.*, 193 F. 2d 8 (C. A. 1); *N L. R. B.* v. *Clearfield Cheese Co., Inc.*, 213 F. 2d 70 (C. A. 3); *N. L. R. B.* v. *Top Mode Manufacturing Co.*, 203 F. 2d 403 (C. A. 3); *N L. R. B.* v. *Everett Van Kleeck & Co., Inc.*, 189 F. 2d 516 (C. A. 2); *N. L. R. B.* v. *Poultry Enterprises, Inc.*, 207 F. 2d 522 (C. A. 5); *N. L. R. B.* v. *Southeastern Rubber Manufacturing Co.*, 213 F. 2d 11 (C. A. 5); *N. L. R. B.* v. *Stewart Oil Co.*, 207 F. 2d 8 (C. A. 5); *Joy Silk Mills* v. *N. L. R. B.*, 185 F. 2d 732 (C.A.D.C.); *Safeway Stores, Inc.*, 99 NLRB 48; and *Squirrel Brand Co.*, 96 NLRB 179.

---

[20] Although the instant record is not clear on the matter, it appears that Local 11 similarly filed and withdrew a representation petition during this period.

1715

E. *Other Unfair Labor Practices*

1. By Local 223

The complaint in Case 36-CA-637, 638 and 639 has one other allegation which, as is apparent, is of a novel nature. It alleges that Teamster Local 223, in its capacity as an employer, has dominated and contributed unlawful support to itself in its other capacity as a labor organization, thereby violating Section 8 (a) (1) and (2) of the Act. Stated otherwise this involves a situation of a dual personality and alleges that Local 223 as an employer had compelled its own employee to join Local 223 and abandon Local 11. The complaint further alleges that Respondent International violated the same sections of the Act by this conduct; it appears to premise responsibility of the International upon the fact that it has had Local 223 under trusteeship for many years and still has. Local 223 has but one employee, Edith Manning, a combined secretary and bookkeeper who regularly devotes only a portion of her work week to that organization; the remainder of her time is devoted to work for three other Teamster locals in the building which are not involved herein. I find, nevertheless, that Manning was a regular employee of Local 223 within the meaning of the Act.

Manning's uncontroverted testimony is that, in March of 1954, Secretary Hildreth of Local 223 approached her and asked if she had any objection to becoming a member of Local 223, claiming that she was the only girl in the building who did not belong. Manning replied that "if that was necessary, I would join Local 223." She added that she would remain a member of Local 11 until she acquired a withdrawal card from that organization. Hildreth replied that she "might call and ask for a withdrawal card." Manning thereafter took steps to join Local 223 and also took steps to withdraw from Local 11. I find that this conversation between Hildreth and Manning, in the position of em-

ployer and employee respectively, when viewed in its proper perspective, constituted an instruction by Hildreth to Manning to join Local 223 and to withdraw from Local 11. Although this is the only act relied upon herein by the General Counsel, in view of the fact that Local 223 had but the one employee I do not view the situation as similar to others where, in view of unlawful acts being isolated, a remedial order is regarded by the Board as not warranted.

I find that by the foregoing conduct Local 223 has interfered with, restrained and coerced its only employee in the exercise of the right to be represented by a bargaining representative of her own choice. I further find, in view of this dichotomy, of Local 223 playing two roles insofar as its own employees are concerned, that Local 223 has in its capacity as an employer contributed unlawful support to itself in its capacity as a labor organization and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act. I deem it unnecessary to pass on whether by the foregoing conduct Local 223 has dominated itself, assuming that to be possible.

A Court has stated that "collective bargaining becomes delusion and a snare if the employer, either directly or indirectly, is allowed to sit on both sides of the bargaining table; and, with the great advantage that he holds as the master of pay and promotions, he will be on both sides of the table if he is allowed to take any part whatever in the choice of bargaining representatives by the employees." *American Enka Corp.* v. *N. L. R. B.*, 119 F. 2d 60 (C. A. 4). I find that the foregoing conduct by Local 223 was violative of Section 8 (a) (1) and (2) of the Act. See *N. L. R. B.* v. *Womyss*, 212 F. 2d 465 (C. A. 9) and *N. L. R. B.* v. *Stow Manufacturing Co.*,—F. 2d—(C. A. 2), decided 12/7/54.

The record amply demonstrates that International Representative Sweeney was in complete control of the affairs of Local 223 and in fact had appointed Hildreth to his job in February of 1954. Accordingly, I find that the International, by virtue of its trusteeship of Local 223, has also violated Section 8 (a) (1) and (2) of the Act. *Albert Evans Trustee, et al.*, 110 NLRB No. 112.

2. By the International and International Representative Sweeney

The complaint in Case 36-CA-648 alleges that in July of 1954 Respondent International and Respondent Sweeney attempted to dissuade employees from honoring Board subpoenas in Case 36-CA-410, to dissuade them from testifying in the case, and induced them to withhold information when testifying and to perjure themselves, thereby violating Section 8 (a) (1) of the Act. As set forth above, Mary Ermence an employee of Security Fund, was under subpoena by the General Counsel to appear at the present hearing on July 21, 1954; she ultimately did appear on July 21 and 22 and testified at a later date, in part, concerning certain events in 1953 involving Sweeney.

As previously found, Ermence, a supervisory employee of Security Fund in 1953, was asked by Sweeney to ascertain whether the employees of Security Fund wished to join a Teamster organization. In addition, in May of 1953 Sweeney asked Ermence to distribute applications for membership in Teamsters and Ermence agreed to do so. Later that month, Sweeney brought her the applications and instructed her to distribute them to girls she was "sure of." Ermence did so, collected the signed applications, and returned them to Sweeney. Thereafter the girls and Ermence were initiated into the Teamster organization in the presence of Sweeney.

Turning to the merits of the allegation under consideration, about 1 week prior to the first day of the present hearing, Sweeney held a private conversation with Ermence and discussed her prospective testimony herein. Sweeney asked her who had given her the 1953 applications for Teamsters. Ermence replied that Sweeney had. Sweeney denied it, but when Ermence stuck to her story, he finally admitted that he had. Sweeney suggested to Ermence that she need not so testify on the witness stand. Ermence replied that she would not perjure herself on the stand. Sweeney stated that "employers" frequently lied on the stand, but Ermence refused to change her story. Sweeney asked her to cooperate by going on a long trip. Ermence refused, pointing out that her family commitments prevented such a step. Sweeney then suggested that she testify that she, Ermence, had asked Sweeney for the applications, that he then invited her to pick them up on his desk, and that she did so. Ermence protested that this was also contrary to fact; as heretofore found, Sweeney had brought her the applications and received the signed ones after she carried out his instructions. The talk ended on this note.[21]

I find that by the foregoing conduct Sweeney attempted to induce Ermence to change her testimony concerning the application blanks he had given her and proposed that she take a trip in order to avoid testifying at this hearing. I find that this conduct, directed toward a prospective wit-

ness under subpoena at a Board hearing, constituted interference with, restraint and coercion by Respondent International and Respondent Sweeney of employees in the exer-

[21] The foregoing findings are based upon the testimony of Ermence. I have heretofore set forth and considered in detail the conflict between the testimony of Ermence and that of Sweeney as to this episode. It would be cumulative to repeat it here save to state that for the reasons previously indicated I credit Ermence herein as elsewhere.

cise of the rights guaranteed by Section 7 of the Act and was violative of Section 8 (a) (1) thereof. See *Tri County Employers Association, et al.*, 103 NLRB 653, 673, and *Amory Garment Company, Inc.*, 80 NLRB 182, 199.

Sweeney was involved in another episode with prospective witness Barnes approximately 1 day prior to the hearing on July 21, 1954. Barnes, who was under subpoena by the General Counsel along with Ermence and others, testified, and I so find, that she had been given an application by Sweeney in May or June of 1953. On the indicated occasion in 1954, Sweeney, who had been advised by his counsel that Barnes would testify that Sweeney had given her the application blank for Teamsters, informed Barnes that her prospective testimony in the matter was false. Although I have credited Barnes as to what had actually taken place, I see no basis for finding an unfair labor practice predicated upon Sweeney's remarks to Barnes in 1954. I therefore base no adverse finding on this incident.[22]

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondents set forth in Section III above, occurring in connection with the operations of Respondents set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The Remedy

Having found that the various Respondents have engaged in a number of unfair labor practices, I shall recommend that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent Teamsters Security Administration Fund and Respondent William C. Earhart,

Administrator, have refused to bargain with Office Employes International Union, Local No. 11, as the exclusive representative of the employees of Teamsters Security Administration Fund in an appropriate unit. It will accordingly be recommended that they, upon request, bargain collectively with Local No. 11 as the exclusive representative of their employees with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a written and signed contract.

It has been found that Teamsters Security Administration Fund and Earhart have discriminated with respect to the hire and tenure of employment of Marian Henry and Mary Ermence on August 13 and August 16, 1954, respectively; that Teamsters Building Association, Inc., has discriminated with respect to the hire and tenure of employment of Virginia Olstad on July 29 and Irene Morcom Barnes on or about July 29, 1954; that Joint Council of Drivers, No. 37, has discriminated with respect to the hire and tenure of employment of Irene Morcom Barnes on August 13, 1954; and that Warehousemen Local No. 206, has discriminated with respect to the hire and tenure of

employment of June Cook on June 10, 1954. I shall therefore recommend that each of the above-named Respondents offer its respective employees full and immediate reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights or privileges. See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827. It will further be recommended that each Respondent make its respective employee or employees whole for any loss of pay suffered by reason of the discrimination against them.

---

* The record does not disclose any basis for Sweeney's desire to disassociate himself from the distribution of the applications for Local 223.

Said loss of pay, based upon earnings which each would normally have earned from the date of the discrimination to the date of a proper offer of reinstatement, plus net earnings, shall be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289. See *N. L. R. B.* v. *Seven-Up Bottling Co.*, 34 U. S. 344.[23]

It has been found that various of Respondents have unlawfully assisted Local 223 and it will be recommended that they respectively cease and desist from such conduct. The General Counsel has urged that they also be ordered to refund dues paid by the employees of these Respondents to Local 223. There is, however, no evidence that an involuntary checkoff of dues was enforced or that employees were coerced into the payment of dues. Accordingly, refunds of these payments are not ordered. *Milco Undergarment Co.*, 106 NLRB No. 125, enf'd 212 F. 2d 801 (C. A. 3), and *Standard Transformer Co.*, 97 NLRB 669.

The unfair labor practices found above on the part of Respondents and the willingness of Respondents to resort to strongly unlawful methods to counteract an attempt by employees to achieve self-organization through a labor organization of their own choosing manifest a fundamental and extreme antipathy to the objectives of the Act and warrant an inference that the commission of other unfair labor practices may be anticipated in the future. It will therefore be recommended that Respondents be ordered to cease and desist from in any manner interfering with, restraining, or coercing employees of the Teamster Building in the exercise of the rights guaranteed by the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

Conclusions of Law

1. Teamsters Security Administration Fund, William C. Earhart, Administrator; Joint Council of Drivers, No. 37;

Teamsters Building Association, Inc.; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; and Warehousemen Local No. 206, constitute employers within the meaning of Section 2 (2) of the Act with respect to their own respective employees.

2. Office Employes International Union, Local No. 11, and Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, constitute labor organizations within the meaning of Section 2 (5) of the Act.

3. All employees of Teamsters Security Administration Fund, Portland, Oregon, and its administrator, William C. Earhart, excluding supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. Office Employes International Union, Local No. 11, was on July 16, 1954, and at all times thereafter has been, the exclusive representative of the employees in the above-described appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Office Employes International Union, Local No. 11, on July 29, 1954, and thereafter as the exclusive representative of its employees in an appropriate unit, Respondent Teamsters Security Administration Fund and Respondent William C. Earhart, Administrator, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By discriminating in regard to the hire and tenure

---

[22] While some mention was made that Cook and Olstad had not obtained subsequent employment, the record is vague and the issue of subsequent losses of earnings was not litigated before me. Hence, no consideration has been given herein to the matter which, in any event, is one for the compliance stage of the case.

of employment of Marian Henry on August 13, 1954, Teamsters Security Administration Fund and William C. Earhart, Administrator, have engaged in unfair labor practices within the meaning of Section 8 (a) (1), (2), (3), and (4) of the Act.

7. By discriminating in regard to the hire and tenure of employment of Mary Ermence on August 16, 1954, Teamsters Security Administration Fund and William C. Earhart, Administrator, have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

8. By discriminating in regard to the hire and tenure of employment of Virginia Olstad on July 29, 1954, Teamsters Building Association, Inc., has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1), (3), and (4) of the Act.

9. By discriminating in regard to the hire and tenure of employment of Irene Morcom Barnes on or about July 29, 1954, Teamsters Building Association, Inc., has engaged in unfair labor practices within the meaning of Section 8 (a) (1), (2), (3), and (4) of the Act.

10. By discriminating in regard to the hire and tenure of employment of June Cook on June 10, 1954, Warehousemen Local No. 206, has engaged in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

11. By interfering with, restraining, and coercing employees in the exercise of the rights guaranteed by Section 7 of the Act, Teamsters Security Administration Fund; William C. Earhart, Administrator; Warehousemen Local No. 206; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers; Joint Council of Drivers, No. 37; and Teamsters Building Association, Inc., have engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

12. By contributing unlawful support to Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, in its capacity as a labor organization; Teamsters Security Administration Fund; William C. Earhart, Administrator; Warehousemen Local No. 206; Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, in its capacity as an employer; and Joint Council of Drivers, No. 37, have engaged in unfair labor practices within the meaning of Section 8 (a) (2) of the Act.

13. By seeking to have a prospective witness under subpoena at a Board proceeding change her testimony and evade testifying, Respondent International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Respondent John J. Sweeney have engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

14. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, I recommend that:

I. Teamsters Security Administration Fund, its officers, agents, successors and assigns, and William C. Earhart, its administrator, shall:

(a) Cease and desist from:

(1) Discouraging membership in Office Employes International Union, Local 11, and encouraging membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or in any other labor organization of its employees, by discharging employees or discriminating in

any manner with respect to hire, tenure or any term or condition of employment because of the union membership or activity of employees or because employees have given testimony under the Act.

(2) Refusing to bargain collectively with Office Employes International Union, Local No. 11, as the exclusive representative of all its employees, excluding supervisors, at its Portland Offices.

(3) Soliciting membership in, passing out and picking up applications for membership in, promising benefits for support of, and threatening economic reprisals for failure to join, Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or any successor thereto.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Upon request, bargain collectively with Office Employes International Union, Local No. 11, as the exclusive representative of all its employees, excluding supervisors, with respect to wages, rates of pay, hours of employment or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(2) Offer to Marian Henry and Mary Ermence immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of pay suffered by reason of the discrimination against them, in the manner set forth in the section of this report entitled "The remedy."

(3) Withhold all recognition from Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or any successor thereto, as the representative of its employees, until said organization is duly certified by the Board.

(4) Post at its offices at Portland, Oregon, copies of the notice attached hereto and marked Appendix A.

II. Warehousemen Local 206, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, its officers, representatives, and agents shall:

(a) Cease and desist from:

(1) Discouraging membership in Office Employes International Union, Local No. 11, and encouraging membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or in any other labor organization of its employees, by discharging employees or discriminating in any manner with respect to hire, tenure, or any term or condition of employment.

(2) Soliciting membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or any successor thereto.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Offer to June Cook immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges, and make her whole for any loss of pay suffered by reason of the discrimination against her, in the manner set forth in the section of this report entitled "The remedy."

(2) Withhold all recognition from Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or any successor thereto, as the representative of its employees, until said organization is certified by the Board.

(3) Post at its offices at Portland, Oregon, copies of the notice attached hereto and marked Appendix B.

III. Teamsters Building Association, Inc., its officers, agents, successors and assigns, shall:

(a) Cease and desist from:

(1) Discouraging membership in Office Employes International Union, Local No. 11, and encouraging membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or in any other labor organization of its employees, by discharging employees or discriminating in any manner with respect to hire, tenure or any term or condition of employment because of the union membership or activity of employees or because employees have given testimony under the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Offer to Virginia Olstad and Irene Morcom Barnes immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay suffered by reason of the discrimination against them, in the manner set worth in the section of this report entitled "The remedy."

(2) Post at its offices at Portland, Oregon, copies of the notice attached hereto and marked Appendix C.

1722

IV. Joint Council of Drivers, No. 37, its officers, representatives and agents, shall:

(a) Cease and desist from:

(1) Discouraging membership in Office Employes International Union, Local No. 11, and encouraging membership in Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, or in any other labor organization of its employees, by discharging employees or discriminating in any manner with respect to hire, tenure or any term or

condition of employment because of the union membership or activity of employees or because employees have given testimony under the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Offer to Irene Morcom Barnes immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority or other rights and privileges and make her whole for any loss of pay she may have suffered by reason of the discrimination against her, in the manner set forth in the section of this report entitled "The remedy."

(2) Post at its offices at Portland, Oregon, copies of the notice attached hereto and marked Appendix D.

V. Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, their officers, representatives, agents and trustees shall:

(a) Cease and desist from:

(1) Requiring its own employees to join Local No. 223, or any successor thereto, and to withdraw from Office Employes International Union, Local No. 11.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Withhold all recognition from said Local No. 223 as the representative of its own employees until duly certified by the Board.

(2) Post at their offices at Portland, Oregon, copies of the notice attached hereto and marked Appendix E.

VI. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, its officers.

representatives and agents, and John J. Sweeney, its agent, shall:

(a) Cease and desist from:

(1) Inducing prospective witnesses at a National Labor Relations Board proceeding to change their testimony and to absent themselves from such proceedings.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Post at the Teamsters office building in Portland, Oregon, copies of the notice attached hereto and marked Appendix F.

VII. All of the above-entitled Respondents, named in these RECOMMENDATIONS, shall:

(a) Cease and desist from:

(1) In any manner interfering with, restraining, or coercing their respective employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Office Employes International Union, Local No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Upon request made of those Respondents who have been ordered to reinstate employees make available to the

National Labor Relations Board or its agents, for examination and copying, all payroll social security time and personnel records necessary to determine the amounts of back pay due.

(2) Respectively sign copies of the notices heretofore specified, which are to be furnished by the Regional Director for the Nineteenth Region, post said notices immediately upon receipt thereof, and maintain them for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respective Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(3) Notify the Regional Director for the Nineteenth Region in writing within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, what steps they have taken to comply herewith.

It is recommended that, unless on or before twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order, the Respondents and each of them notifies the aforesaid Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring them to take such action.

Dated this 10 day of January 1955.

MARTIN S. BENNETT
Martin S. Bennett
Trial Examiner

APPENDIX A

NOTICE TO ALL EMPLOYEES

Pursuant To
The Recommendations of A Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, and we will not encourage membership in LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or in any other labor organization of our employees, by discharging employees or discriminating in any manner with respect to hire, tenure, or term or condition of employment.

WE WILL NOT discharge or discriminate in any manner against any employee who gives or has given testimony in a proceeding before the National Labor Relations Board.

WE WILL offer to MARIAN HENRY and MARY ERMENCE immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of our discrimination against them.

WE WILL bargain collectively, on request, with OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, as the exclusive representative of all our employees, excluding supervisors, with respect to wages, rates of pay, hours, or other terms or conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

WE WILL NOT solicit membership in, passout and pick up applications for membership in, promise benefits for

support of, and threaten economic reprisals for failure to join LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or any successor thereto, and we will withhold all recognition from said organization until duly certified by the Board.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

1725

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as this right may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

TEAMSTERS SECURITY ADMINISTRATION FUND
(Employer)

Dated By
(Representative) (Title)

WILLIAM C. EARHART
(Administrator)

Dated By

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, and we will not encourage membership in LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or in any other labor organization, by discharging employees or discriminating in any manner with respect to hire, tenure, or any term or condition of employment.

WE WILL offer to JUNE COOK immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay suffered as a result of our discrimination against her.

WE WILL NOT solicit membership in LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or in any successor thereto, and we will withhold all recognition from said organization until duly certified by the Board.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist OFFICE EMPLOYES INTERNATIONAL UNION LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage

in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as this right may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

WAREHOUSEMEN LOCAL No. 206, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL
(Employer)

Dated By
(Representative) (Title)

APPENDIX C

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, and we will not encourage membership in LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or in any other labor organization of our employees, by discharging employees or discriminating in any manner with respect to hire, tenure, or any term or condition of employment.

WE WILL NOT discharge or discriminate in any manner against any employee who gives or has given testimony in a proceeding before the National Labor Relations Board.

WE WILL offer to VIRGINIA OLSTAD and IRENE MORCOM BARNES immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of our discrimination against them.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted a[illegible]ties for the purpose of collective bargain-

---

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

ing or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as this right may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

TEAMSTERS BUILDING ASSOCIATION, INC.
(Employer)

Dated By
(Representative) (Title)

1728

APPENDIX D

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, and we will not encourage membership in LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or in any other labor organization of our employees, by discharging employees or discriminating in any manner with respect to hire, tenure, or any term or condition of employment.

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

WE WILL NOT discharge or discriminate in any manner against any employee who gives or has given testimony in a proceeding before the National Labor Relations Board.

WE WILL offer to IRENE MORCOM BARNES immediate and full reinstatement to her former or substantially equivalent position, without prejudice to her seniority or other rights and privileges previously enjoyed, and make her whole for any loss of pay suffered as a result of our discrimination against her.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as this right may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

JOINT COUNCIL OF DRIVERS, No. 37
(Employer)

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX E

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT require our employees to join LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS, or any successor thereto, or to withdraw from OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, and we will withhold all recognition from said LOCAL No. 223, as the representative of our employees, until duly certified by the Board.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as this right may be

---

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

LOCAL NO. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS
(Employer)

Dated By
(Representative) (Title)

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL
(Employer)

Dated By
(Representative) (Title)

1730

APPENDIX F

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT induce prospective witnesses at a National Labor Relations Board proceeding to change their testimony and to absent themselves from such proceedings.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-

---

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

organization, to form labor organizations, to join or assist OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization, as authorized in Section 8 (a) (3) of the Act.

All our employees are free to become or remain, or to refrain from becoming or remaining members of OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, or of any other labor organization, except as such right may be affected by an agreement executed in conformity with Section 8 (a) (3) of the Act.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL
(Employer)

Dated By
(Representative) (Title)

JOHN J. SWEENEY

Dated By

1731

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and WILLIAM C. EARHART, Administrator thereof, and of TEAMSTERS SECURITY ADMINISTRATION FUND; and WAREHOUSE LOCAL No. 206, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and JOINT COUNCIL OF DRIVERS, No. 37

and

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its Agent, JOHN J. SWEENEY, and

OREGON TEAMSTERS' SECURITY PLAN OFFICE, and WILLIAM C. EARHART, Administrator thereof, and of TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL NO. 11

ORDER TRANSFERRING CASE TO THE NATIONAL LABOR RELATIONS BOARD

A hearing in the above-entitled cases having been held before a duly designated Trial Examiner and the Intermediate Report and Recommended Order of the said Trial Examiner, a copy of which is annexed hereto having been filed with the Board in Washington, D. C.,

IT IS HEREBY ORDERED, pursuant to Section 102.45 of National Labor Relations Board Rules and Regulations that the above-entitled matter be, and it hereby is, transferred to and continued before the Board.

Dated, Washington, D. C., January 10, 1955.
By direction of the Board:

FRANK M. KLEILER
Executive Secretary

NOTE: Communications concerning compliance with the Intermediate Report should be with the Director of the Regional Office issuing the complaint.
Attention is specifically directed to the excerpts from the Rules and Regulations appearing on the page attached hereto.
Exceptions to the Intermediate Report in these cases must be received by the Board in Washington, D. C., on or before February 2, 1955.

1732

EXCERPTS FROM RULES AND REGULATIONS OF NATIONAL LABOR RELATIONS BOARD

SERIES 6

Section 102.46 *Exception or supporting briefs; time for filing; where to file; service on parties; extension of time; effect of failure to include matter in exceptions; oral arguments.*—(a) Within 20 days or within such further period as the Board may allow from the date of the service of the order transferring the case to the Board, pursuant to Section 102.45, any party may (in accordance with Section 10 (c) of the act and Section 102.82 and Section 102.83 of these rules) file with the Board in Washington, D. C., seven copies of a statement in writing setting forth exceptions to the intermediate report and recommended order or to any other part of the record or proceedings (including rulings upon all motions or objections), together with seven copies of a brief in support of said exceptions and immediately upon such filing copies shall be served on each of the other parties; and any party may, within the same period, file seven copies of a brief in support of the intermediate report and recommended order. Copies of such exceptions and briefs shall immediately be served on each of the other parties. Statements of exceptions and briefs shall designate by precise citation *of page and line* the portions of the record relied upon. Upon special leave of the Board, any party may file a reply brief upon such terms as the Board may impose. Requests for such leave or for extension of the time in which to file exceptions or briefs under authority of this section shall be in writing and copies thereof shall be immediately served on each of the other parties.

(b) No matter not included in a statement of excetpions may thereafter be urged before the Board, or in any further proceedings.

(c) Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board simultaneously with the statement of any exceptions filed pursuant to the provisions of subparagraph (*a*) hereof. The Board shall notify the parties of the time and place of oral argument, if such permission is granted.

(d) Oral arguments are limited to 30 minutes for each party entitled to participate. No request for additional time will be granted unless timely application is made in advance of oral argument.

(e) Exceptions to intermediate reports and recommended orders, or to the record, briefs in support of exceptions, and briefs in support of intermediate reports and recommended orders shall be legibly printed or otherwise legibly duplicated: Provided, however, *that carbon copies of typewritten matter shall not be filed, and if submitted will not be accepted.*

Section 102.47 *Filing of motion after transfer of case to Board.*—All motions filed after the case has been transferred to the Board pursuant to Section 102.45 shall be filed with the Board in Washington, D. C., by transmitting seven copies thereof, together with an affidavit of service upon each of the parties. Such motions shall be legibly printed or otherwise duplicated; *Provided, however,* That carbon copies of typewritten matter shall not be filed, and if submitted will not be accepted.

Section 102.48 *Action of Board upon expiration of time to file exceptions to intermediate report.*—(a) In the event no statement of exceptions is filed as herein provided, the findings, conclusions, and recommendations of the trial examiner as contained in his intermediate report and recommended order shall be adopted by the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes. However, the Board may, in its discretion, order such case closed upon compliance.

(b) Upon the filing of a statement of exceptions and briefs, as provided in Section 102.46, the Board may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before a member of the Board or other Board agent or agency, or may close the case upon compliance with recommendations of the intermediate report or may make other disposition of the case.

1733

Section 102.80 *Service of process and papers, proof of service.*—Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post-office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same.

Section 102.81 *Same; by parties; proof of service.*—Service of papers by a party on other parties shall be made by registered mail or in any manner provided for the service of papers in a civil action by the law of the State in which the hearing is pending. When service is made by registered mail, the return post-office receipt shall be proof of service. When service is made in any manner provided by such law, proof of service shall be made in accordance with such law.

Section 102.82 *Date of service; filing of proof of service.*—The date of service shall be the day when the matter served is deposited in the United States mail, or is delivered in person, as the case may be. In computing the time from such date, the provisions of section 102.83 apply.

1783

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Richard R. Morris.....
(Signature or name of addressee)

2 Lucille Brisbane.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....May 12, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Anderson, Franklin & Landye.....
(Signature or name of addressee)

2 J. Slater.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....May 12, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Bassett, Geisness & Vance.....
(Signature or name of addressee)

2 By G. Roper.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....5-13, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Office Employes Int'l Union #11.....
(Signature or name of addressee)

2 L. E. Ellis.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....May 12, 1955..

.....

1784

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Bailey, Lezak & Swish.....
(Signature or name of addressee)

2 S. Young.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....5-13, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 NLRB .....
(Signature or name of addressee)

2 M. Klippel .....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....May 12, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 NLRB .....
(Signature or name of addressee)

2 Janice J. Weigel.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....5-13, 1955..

.....

1785

NATIONAL LABOR RELATIONS BOARD

Washington, D. C.

ORAL ARGUMENT APPEARANCE SHEET

Date: 24 May 1955

Time Began: 10:00 A.M. Ended .....

CASE NAME

OREGON TEAMSTERS' SECURITY PLAN OFFICE, and WAREHOUSEMEN LOCAL NO. 206, Affiliated With The INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Case Number 36-CA-410, 36-CA-637, 36-CA-638, 36-CA-639, 36-CA-647, 36-CA-648

BOARD MEMBERS PRESENT

1. Guy Farmer
2. Abe Murdock
3. Ivar H. Peterson
4. Philip Ray Rodgers
5. Boyd Leedom

APPEARANCES:

Respondent Oregon Teamsters Security Plan Office, and *William C. Earhart, Administrator*
Represented by
Name *Richard R. Morris,* Esquire
Address *618 Failing Building, Portland 4, Oregon*
Name *James Landye,* Esquire — Warehousemen Local No. 206
Address *333 American Bank Building, Portland, Oregon*

Respondent International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and its Local No. 223
Represented by
Name *Samuel B. Bassett*, Esquire
Address *New World Life Building, Seattle 4, Washington*
Charging Party Office Employes International Union, Local No. 11
Name *Joseph Finley*, Esquire
Address *810—18th Street, N.W., Washington, D. C.*
Charging Party
Represented by
Name
Address
Appearing on behalf of General Council
Name *Mr. M. Mallet-Prevost*
Address *National Labor Relations Board, Washington, D. C.*

1786

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and WILLIAM C. EARHART, Administrator thereof, and of TEAMSTERS SECURITY ADMINISTRATION FUND; and WAREHOUSEMEN LOCAL No. 206, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

and TEAMSTERS BUILDING ASSOCIATION, INC.
and
Case No. 36-CA-638
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS
and
Case No. 36-CA-639
WAREHOUSEMEN LOCAL No. 206, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and
Case No. 36-CA-647
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and JOINT COUNCIL OF DRIVERS, No. 37
and
Case No. 36-CA-648
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its Agent, JOHN J. SWEENEY, and OREGON TEAMSTERS' SECURITY PLAN OFFICE, and WILLIAM C. EARHART, Administrator thereof, and of TEAMSTERS SECURITY ADMINISTRATION FUND
and
OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

DECISION AND ORDER

On January 10, 1955, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and 113

NLRB No. 111 recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions together with supporting briefs.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record herein. The Board finds that it will not effectuate the policies of the Act to assert jurisdiction in this proceeding, and will, for the reasons hereinafter stated, dismiss the complaints herein in their entirety.

This is the first proceeding to be decided by the Board in its 20-year history in which labor organizations have been charged with committing unfair labor practices as employers in dealing with their own employees.

The Respondents herein are:

1. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, hereinafter called the International and its representative, John J. Sweeney.

2. Teamsters' Locals No. 206 and No. 223, which represent employees in the Portland, Oregon, area.

3. Teamsters' Joint Council of Drivers No. 37, hereinafter called Joint Council, which coordinates the activities of 23 Teamster locals in Oregon and Washington.

4. Oregon Teamsters' Security Plan Office, hereinafter called Security Plan Office, which is the name assumed by an organization, consisting at the time of the hearing in this case of an administrator, Respondent Earhart, and a staff

of office and clerical employees. With the aid of this staff, Earhart administers 18 trust funds established, pursuant to Section 302 of the Taft-Hartley Act, by collective bargaining agreements between various Teamster locals and employers in Oregon, Washington, Idaho and Montana.

Under the applicable trust agreements the administrator of these funds is appointed by the trustees, half of whom are designated by Teamsters, the balance by the interested employers. With contributions to the trust fund furnished by the employers, the administrator purchases health and welfare insurance policies for the employee-beneficiaries of the trust, and his office processes and pays claims under these policies.

5. Teamsters Building Association, Inc., hereinafter called Building Association, which is a nonprofit corporation, owning and operating a small office building in Portland, Oregon. All the stock of this corporation is owned by 6 Teamster locals. All the tenants of this office building are exclusively Teamster organizations, except for Security Plan Office.

The Trial Examiner found that all the Respondents were "employers" within the meaning of section 2 (2) of the Act, which provides that the term "employer" is used in the Act does not include "any labor organization (*other than when acting as an employer*), or anyone acting in the capacity of officer or agent of such labor organization" (emphasis added). The Trial Examiner construed this parenthetical language to mean that, when acting as employers with relation to their own employees, labor organizations are subject to the proscriptions of Section 8 (a) of the Act applicable to employers generally. The Trial Examiner found also that all the Respondents were engaged in commerce. With regard to the further question whether it would effectuate the policies of the Act to assert jurisdiction over the

Respondents, the Trial Examiner deemed it proper to apply to them the same jurisdictional standards as the Board has heretofore applied to employers generally. Applying these standards, the Trial Examiner found that all the Respondents except Security Plan Office were an integral part of a multistate enterprise, consisting of the International and all its affiliates, and that the annual outflow of initiation fees and per capita taxes from its affiliates to the International's headquarters in Washington, D. C., ($6,000,000) was more than sufficient to meet the Board's applicable minimum requirement ($250,000) for asserting jurisdiction over a multistate enterprise.[1] With regard to

Security Plan Office, the Trial Examiner relied on the fact that from its office in Portland, Oregon, it remitted to an insurance company in California policy premiums at a rate in excess of $2,000,000 per annum, which was more than sufficient to meet the minimum outflow requirement applicable under the Board's standards to an independent enterprise ($50,000).[2] The Trial Examiner, accordingly, concluded that it would effectuate the policies of the Act to assert jurisdiction over all the Respondents.

The Respondents' except to the Trial Examiner's foregoing jurisdictional findings. We find merit in these exceptions.

We agree with the Trial Examiner's general interpretation of Section 2 (2) of the Act that labor organizations are "employers" with respect to their own employees. However, Board assertion of its jurisdiction over the Respondents in this case, as in all cases, depends upon whether the Respondents, as employers, are engaged in commerce or in activities affecting commerce, and, if so, whether the policies of the Act will be effectuated by assert-

[1] See *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.
[2] *Ibid.*

ing jurisdiction over them. Demonstrably, the mere inclusion of labor unions in the statutory definition of "employer" does not constitute a legislative ukase that, in all instances, their operations affect commerce and that assertion of the Board's jurisdiction over unions will effectuate the policies of the Act.

We consider the limited inclusion of labor organizations in the Act's definition of an "employer" to be consistent with the undisputed legislative intent to empower the Board to decide, pursuant to appropriate jurisdictional standards, whether to assert jurisdiction over particular employers, thus leaving the Board free to determine whether the operations of a union-employer, like any other employer, affect commerce within the meaning of the Statute, and, if so, whether Board assertion of its jurisdiction over such operations will effectuate the policies of the Act.

All of the Respondents in this case, including the Building Association and the Security Plan Office, are nonprofit organizations. The relevant transactions of the Respondent International and its Locals consist of the interstate transmission of member initiation fees and per capita taxes from the Locals to the International. The Security Plan Office remits employees' policy premiums

across State lines to an insurance carrier. The Joint Council and the Building Association have virtually no interstate inflow or outflow of funds.

Each Respondent exists and operates for the benefit of Teamsters members and other employees in bargaining units the Teamsters represents. The basic aim and function of the International, Joint Council, and Locals is to improve the working conditions of workers, increase their job security, and otherwise promote their general welfare. The

Security Plan Office is a fiduciary engaged essentially in administering trust funds established by collective bargaining agreements pursuant to the provisions of Section 302 of the Act. The operations of the Security Plan Office constitute a typical labor union function in furtherance of employee welfare. The Building Association is an instrumentality of six stockholders, Local 206 and five other Teamsters Locals, none of which participates in any commercial transactions.

In these circumstances, we believe that, if the Respondents are to be treated like any group of employers for which the Board has established jurisdictional criteria, that group must be the one categorized as nonprofit organizations. The standards for nonprofit employers are clear;[3] the Board, with legislative approval, asserts jurisdiction over nonprofit organizations "only in exceptional circumstances and in connection with purely commercial activities of such organizations."[4] The Respondents' activities directed to advancement of employee interests are, obviously, not substantial engagement in a commercial venture within the contemplation of the Board's jurisdictional principles for nonprofit employers.[5]

We find accordingly, that the initial requirement for assertion of Board jurisdiction over the operations of the Respondents—effect upon commerce within the meaning of the Act—has not been established.

1791

Moreover, even assuming that the Board's jurisdictional standards for nonprofit organizations should not be applied

---

[3] *Lutheran Church, Missouri Synod*, 109 NLRB 859; *Armour Research Foundation of Illinois Institute of Technology*, 107 NLRB 1052; *Califnoria Institute of Technology*, 102 NLRB 1402; *Philadelphia Orchestra Association*, 97 NLRB 548; *The Trustees of Columbia University in the City of New York*, 97 NLRB 424.

[4] House Report No. 510, 80th Cong. 1st Sess., 32 (1947).

[5] Cf., *Bausch & Lomb Optical Company*, 108 NLRB 1555, wherein the labor organization involved was engaged in the manufacture and sale of optical products.

to the Respondents, we would not assert jurisdiction over their operations in this case. If the standards for nonprofit employers generally are not applicable to the nonprofit Respondents, we do not deem applicable the existing Board jurisdictional criteria for any other type of employer. The Board's overall jurisdictional plan takes cognizance of different types of employer operations. There are, for example, different standards for manufacturing companies, public utilities, transportation companies, and others. We do not believe that labor organizations, which, when engaged in their primary function of advancing employee welfare, are institutions unto themselves within the framework of this country's economic scheme, should be made subject to any of the standards originated for business organizations.[6] Accordingly, we would, at least, require for labor organizations as employers the establishment of a jurisdictional standard contemplating the singular characteristics of their institutional operations. In presenting this case for Board determination the General Counsel failed to suggest any such standard.

In light of these considerations, we shall dismiss, in their entirety, the complaints against all the Respondents.[7]

ORDER

Upon the entire record in this proceeding, and pursuant to Section 10 (c) of the National Labor Relations Act, as

[6] With respect to Respondent Building Association, the record shows that it serves the tenants in the small office building it owns and operates. If we were to apply to Building Association, standing alone, the Board's standard for employers operating office buildings, we would not assert jurisdiction. In *McKinney Avenue Realty Company (City National Bank)*, 110 NLRB 547, the Board ruled it would assert jurisdiction over an office building operation only when the operator of the building is otherwise engaged in commerce and uses the building primarily to house its own offices. As noted above, the Building Association itself is not engaged in commerce nor does the record show any transactions in commerce by any of its stockholders.

[7] To the extent inconsistent herewith, the decision in *Air Line Pilots Association, International*, 97 NLRB 929, is hereby overruled.

amended, the National Labor Relations Board hereby orders that the complaints in Cases Nos. 36-CA-410, 36-CA-637, 36-CA-638, 36-CA-639, 36-CA-647 and 36-CA-648, be, and they hereby are, dismissed in their entirety.

Dated, Washington, D. C., Aug. 25, 1955.

GUY FARMER,
Chairman
IVAR H. PETERSON,
Member
NATIONAL LABOR RELATIONS BOARD

(SEAL)

ABE MURDOCK, MEMBER, concurring:

I concur in the result dismissing the complaint herein, but on more limited grounds than those set forth in the main opinion.

In my opinion, after careful reconsideration of the issue,[8] Congress did not intend, either in the Wagner Act or the Taft-Hartley Act, to regulate relations between unions and such employees as they utilize in their normal collective bargaining activities. When a union leaves its normal role as a collective bargaining agency, and embarks on a commercial enterprise, however, it obviously cannot carry into that field its immunity as a collective bargaining agency.

I note that my dissenting colleagues quote extensively from legislative history of pre-Wagner Act bills in coming to the opposite conclusion. However, the legislative history of the Wagner Act itself is the only sure guide to the intent of the Congress which enacted that Act. Yet my dissenting colleagues fail to quote the pertinent section of the Senate Report thereon.

[8] In 1951, I signed the Board's opinion in *Airline Pilots Association*, 97 NLRB 929, where the issue arose in a representation proceeding.

The Senate Committee Report on S. 1958 explained the exclusion of labor organizations from the definition of "employer" in Section 2(2) of the Act in these words:

> The term "employer" excludes labor organizations, their officers, and agents (*except* in the *extreme cases* where they are acting as employers in relation to their own employees). Otherwise the provisions of the bill which prevent employers from participating in the organizational activities of workers would extend to labor unions as well, and thus would deprive unions of one of their normal functions. (Emphasis supplied.)[9]

In other words, unions had to be generally excluded from the definition of "employer" or they would run afoul of Section 8 (a) (1) and (2) by attempting to organize the employees of other employers, either on their own behalf or in behalf of another union. Only one exception to this blanket exclusion of unions from the definition of "employer" is made—"in *extreme cases* where they are act-

ing as employers in relation to their own employees." Had Congress intended that in all cases unions should be regulated as employers in relation to their own employees, it obviously would simply have said this without qualification. But instead it limited their inclusion to "extreme cases." Plainly the word "extreme" must be given some effect in determining what Congress intended rather than ignoring it or reading it out as our dissenting colleagues necessarily do. There is nothing "extreme" or unusual in a union having employees in carrying on its normal collective bargaining functions. At the minimum unions commonly have office and clerical employees and paid organizers, as Congress plainly knew. Therefore Congress must have been talking about something else when it made reference to "extreme cases" where they are acting as employers in

[9] Board compilation of Legislative History of NLRA, 1935, p. 2305.

The person or party serving the papers or process on other parties in conformance with Sections 102.80 and 102.81 shall make proof of service thereof to the Board promptly and in any event within 24 hours after the return post-office receipt or other evidence for such proof of service comes into the possession of the party making the service. Failure to make proof of service does not affect the validity of the service.

Section 102.83 *Time; additional time after service by mail.*—In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event, the period runs until the end of the next day, which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. For the purpose of this section a Saturday on which the Board's offices are not open for business shall be considered as a holiday, but a half holiday shall be considered as other days and not as a holiday. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period, provided however, that 3 days shall not be added if any extension of such time may have been granted.

When the act or any of these rules requires the filing of a motion, brief, exception, or other paper in any proceeding, such document must be received by the Board or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and WILLIAM C. EARHART, Administrator thereof, and of TEAMSTERS SECURITY ADMINISTRATION FUND; and WAREHOUSE LOCAL No. 206, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

and

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and JOINT COUNCIL OF DRIVERS, No. 37

and

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

and its Agent, JOHN J. SWEENEY, and
OREGON TEAMSTERS' SECURITY PLAN OFFICE, and
WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND
and
OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

AFFIDAVIT OF SERVICE OF INTERMEDIATE REPORT & RECOMMENDED ORDER and (Order Transferring Cases to NLRB).

DATE OF MAILING January 10, 1955

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Richard R. Morris, Esq.
618 Failing Bldg.,
Portland 4, Oregon

69966

PLAIN MAIL TO:

Oregon Teamsters Secy. Plan Office & Wm. C. Earhart, Administrator thereof, and Teamsters Secy. Admn. Fund; and Warehousemen Local #206, affl. w/IBTCWHA, 1020 N.E. Third Avenue, Portland 12, Oregon

Anderson, Franklin & Landye
Att: James Landye, Esq.
333 American Bank Bldg.
Portland, Oregon

69967

Intl. Bro. of Teamsters, Chauffeurs, Whsemen & Hlps. of Amer., AFL and Teamsters Bldg. Assn. Inc.
1020 N.E. Third Avenue, Portland 12, Oregon

Bassett, Geisness & Vance
Att: Samuel B. Bassett, Esq.
New World Life Bldg.
Seattle 4, Washington

69968

Intl. Bro. of Teamsters, Chauffeurs, Whsemen & Hlps. of Amer., AFL, and its Local #223, Grocery, Meat, Motorcycle and Miscl. Drivers
1020 N.E. Third Avenue, Portland 12, Oregon
Warehousemen Local #206, affl. w/IBTC-WHA, AFL
1020 N.E. Third Avenue, Portland 12, Oregon

Bailey & Lezak
Att: Paul T. Bailey, Esq.
1130 Southwest 3rd
Portland, Oregon

69969

Intl. Bro. of Teamsters, Chauffeurs, Whsemen & Hlps. of Amer., AFL, and Joint Council of Drivers No. 37
1020 N.E. Third Avenue, Portland 12, Oregon

NLRB; 36th Sub-region
U. S. Court House (new)
620 S.W. Main St.
Portland 5, Oregon

69970

Intl. Bro. of Teamsters, Chauffeurs, Whsemen & Hlps. of Amer., AFL, and its Agt. John J. Sweeney and Oregon Teamsters Secy. Plan Office and Wm. C. Earhart, Admin., and of Teamsters Secy. Admn. Fund
1020 N.E. Third Avenue, Portland 12, Oregon

NLRB—19th Region
407 U. S. Court House
5th Ave. & Spring
Seattle 4, Wash.

69971

Office Employees Intl. Union, Local #11
Att: James N. Beyer, Secy.-Treas.
1008 S. W. Sixth Ave., Portland, Oregon

Div. of Trial Examiners, NLRB
206 U. S. Appraisers Bldg.
San Francisco 11, Calif.

69972

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL
100 Indiana Avenue, N.W., Washington, D. C.

Subscribed and sworn to before me this 10th day of January, 1955.

/s/ JAMES ARMISTEAD

By /s/ VINCENT E. THOMPSON
Vincent E. Thompson,
Designated Agent
National Labor Relations Board

1735

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Richard R. Morris.....
(Signature or name of addressee)

2 Thomas J. Moore.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....Jan 11, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Anderson, Franklin & Landye.....
(Signature or name of addressee)

2 Fitzgerald .....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....Jan 11, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Bassett, Geisness & Vance.....
(Signature or name of addressee)

2 By G. Roper.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....Jan 12, 1955..

.....

1736

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Bailey and Lezak.....
(Signature or name of addressee)

2 M. Simpson.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....1-12, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 NLRB .....
(Signature or name of addressee)

2 M. Dannemiller .....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....1-12, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 NLRB .....
(Signature or name of addressee)

2 Janice J. Weigel.....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....1-12, 1955..

.....

1778

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and WILLIAM C. EARHART, Administrator thereof, and of TEAMSTERS SECURITY ADMINISTRATION FUND; and WAREHOUSEMEN LOCAL No. 206, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

and its LOCAL NO. 223, GROCERY, MEAT, MOTORCYCLE AND MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL NO. 206, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

and

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and JOINT COUNCIL OF DRIVERS, No. 37

and

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its Agent, JOHN J. SWEENEY, and OREGON TEAMSTERS' SECURITY PLAN OFFICE, and WILLIAM C. EARHART, Administrator thereof, and of TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL NO. 11

1779

NOTICE OF HEARING

PLEASE TAKE NOTICE that pursuant to authority vested in the National Labor Relations Board under the National Labor Relations Act, as amended, a hearing will be held before the National Labor Relations Board on Tuesday, May 24, 1955, at 10:00 a.m., in Room 2030, Health, Education and Welfare Building, South, between 3rd and 4th Streets, Southwest, Washington, D. C., for the purpose of oral argument in the above-entitled matter. Argument will be limited to one hour for the respondents, to be

shared or divided among them; one-half hour for the party which filed the charge; and one-half hour for the General Counsel.

While each party will be free to use its time in arguing whatever points it chooses, the Board Members are primarily interested in the legal and policy considerations bearing upon the following questions:

1. Are the respondents in this proceeding employers under Section 2 (2) of the Act?

2. By defining employers to include labor organizations "when acting as an employer" did Congress intend to treat labor organizations as employers only with respect to their employees engaged in operations other than normal labor union functions?

3. Are the employees involved in this proceeding engaged in normal labor union functions or in commercial functions?

Dated, Washington, D. C., May 11, 1955.

By direction of the Board:

FRANK M. KLEILER
Executive Secretary

1780

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of SEE ATTACHED SHEETS

AFFIDAVIT OF SERVICE OF NOTICE OF HEARING

DATE OF MAILING May 11, 1955.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled docu-

ment(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Richard R. Morris, Esquire
618 Failing Building
Portland 4, Oregon

69978

Anderson, Franklin & Landye
Att: James Landye, Esquire
333 American Bank Building
Portland, Oregon

69979

PLAIN MAIL TO:

Oregon Teamsters' Security Plan Office and William C. Earhart, administrator thereof, and Teamsters Security Administration Fund and Warehousemen Local No. 206, a/w
the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America
1020 N. E. Third Avenue
Portland 12, Oregon

Bassett, Geisness & Vance
Att: Samuel B. Bassett, Esquire
New World Life Building
Seattle 4, Washington

69980

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Teamsters Building Association, Inc.
1020 N. E. Third Avenue
Portland 12, Oregon

Office Employees International
Union, Local #11
Att: Mr. James N. Beyer
1008 S. W. Sixth Avenue
Portland, Oregon

69981

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers
1020 N. E. Third Avenue
Portland 12, Oregon

Bailey & Lezak
Att: Paul T. Bailey, Esquire
1130 Southwest 3rd
Portland, Oregon

69982

Warehousemen Local No. 206 a/w IBTCWHA, AFL
1020 N. E. Third Avenue
Portland 12, Oregon

NLRB—36th Sub Region
Room 326, U. S. Court House
620 S. W. Main Street
Portland 4, Oregon

69983

International Brotherhood of Teamsters, Chauffeurs, Whsemen & Hlprs. of Amer., AFL, and Joint Council of Drivers No. 37
1020 N. E. Third Avenue
Portland 12, Oregon

NLRB—19th Region

69984

(over)

/s/ JAMES ARMISTEAD

Subscribed and sworn to before me this 11th day of May, 1955.

VINCENT E. THOMPSON
Designated Agent
National Labor Relations Board

1781

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers
of America, AFL, and its agent,
John J. Sweeney and Oregon Teamsters Security
Plan Office and William C. Earhart, Administrator
and of Teamsters Security Administration Fund
1020 N. E. Third Avenue
Portland 12, Oregon

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and
Helpers of America, AFL
100 Indiana Avenue, N. W.
Washington, D. C.

1782

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410
OREGON TEAMSTERS' SECURITY PLAN OFFICE and
WILLIAM C. EARHART, Administrator thereof,

and of TEAMSTERS SECURITY ADMINISTRATION FUND;
and WAREHOUSEMEN LOCAL No. 206, affiliated with
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE
AND MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

and

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and JOINT COUNCIL OF DRIVERS, No. 37

and

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its Agent, JOHN J. SWEENEY,
and OREGON TEAMSTERS' SECURITY PLAN OFFICE,
and WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

relation to their own employees. Such "extreme cases" do exist where unions have departed from their traditional role and embarked on commercial enterprises—banks for example—where they have employees in the same context as any other industrial employer.[10] Plainly then, this exceptional and limited area must be what Congress had in mind. As such, it is the sole exception in which unions are included in the definition of "employer" and are subject to the 8 (a) sections of the Act. Strongly supporting this view is the admitted—and oft-criticized-fact, that the Wagner Act was intended to regulate employers in the interest of employees and unions—not to regulate unions as well.

The Taft-Hartley Act, however, regulated unions as well as employers. But nowhere in its language or its legislative history is there the slightest indication that Congress intended to regulate unions in relation to their own ordinary employees under the 8 (a) sections of the Act. Congress specified the proscribed union unfair labor practices in Section 8 (b) of the Act, which are pertinent in relation to employees of other employers rather than in the context of their own ordinary employer-employee relations. Thus, for example, in Section 8 (b) (2), unions are prohibited from "causing or attempting to cause" other employers to discriminate against their employees, but unions are not

forbidden to discriminate against their own employees. The specification in Section 8 (b) of what are unfair labor practices by unions necessarily excludes others not mentioned, under well established principles of statutory construction.

Contrary to the suggestion of the dissenters, I indulge in no assumptions—tacit or otherwise—as to the need or lack of need of Congressional regulation of relations

[10] See, e. g., Millis and Montgomery, *Organized Labor*, 1945, pp. 344-352, for a discussion of labor unions' experience in the banking business.

between unions and their ordinary employees. That is a matter for Congress to consider and decide. If Congress desires this Board to regulate the relations between unions and their own employees in their normal collective bargaining functions, it can amend the Act to so provide. Until such time, I shall continue in the belief that under the Act as presently drafted they remain free from such regulation.

Dated, Washington, D. C., Aug. 25, 1955.

ABE MURDOCK,
Member
NATIONAL LABOR RELATIONS BOARD

1795

PHILIP RAY RODGERS AND BOYD LEEDOM, MEMBERS, dissenting:

We dissent from the decision of the majority of the Board in this proceeding not to assert jurisdiction over the Respondents. We believe such decision achieves a paradoxical and unwarranted result in permitting labor unions to deny to their own employees the very rights and privileges which unions have so vigorously advocated and won for the employees of others. Labor unions are now free to flout the very statutory provisions which they ardently championed, and which have been hailed as the Magna Charta of labor.

Most of the charges of employer infractions of the Taft-Hartley Act have in the past been filed by labor unions, and one of the most militant unions in this respect has been the Respondent International and its affiliates. They have been commendably alert to detect violations of the Act by employers, and by the very nature of things, they are the ones who usually call for the services of this Board and the Labor Management Relations Act by filing appropriate charges of unfair labor practices.

Employers who have been required to defend themselves before the Board against union charges of discrimination against employees, refusal to bargain with employee representatives, and other forms of interference with employee organizational rights, will no doubt be astonished to learn from the instant decision that the unions which filed the charges against them are free to engage in the very conduct for which they (the employers) are required to answer.

We turn now from these general considerations to the particular cases before us. As the complaints in the instant charges are being dismissed by the majority on jurisdictional grounds, there is no need for us to pass upon the merits of these complaints. It may not be inappropriate to observe, however, that the Respondents herein (all of them labor organizations or agencies controlled by such organizations) are each charged with engaging in one or more of the five unfair labor practices enumerated in Section 8 (a)

of the Act and that the Trial Examiner, after a lengthy and careful analysis of the evidence, sustained virtually all of the charges. Thus, he found that the International, Security Plan Office, and Locals 206 and 223 had violated Section 8 (a) (1) and (2) of the Act by their solicitation of employees of the 3 Respondents last named to join Local 223 rather than the Charging Union, that Security Plan Office, Building Association, and Joint Council had violated Section 8 (a) (1), (2), (3), and (4) of the Act by discharging, altogether, 3 employees and one supervisor (all of whom were adherents of the Charging Union in anticipation of their giving testimony at a Board hearing in support of the charges in Case No. 36-CA-410 against Security Plan Office and Local 206; that Local 206 had violated Section 8 (a) (1) and (3) of the Act by discharging an employee because she had refused to cross a picket line established by the Charging Union; that Security Plan Office had violated

Section 8 (a) (5) of the Act by refusing to bargain with the Charging Union, although it represented a majority of the employees of Security Plan Office; and that the International and its representative, Sweeney, violated Section 8 (a) (1) of the Act by seeking to influence the testimony of a witness at a Board hearing.

These violations found by the Trial Examiner were not mere technical or trivial infringements upon the rights of the employees involved, but were, if the Trial Examiner is correct, part and parcel of a purge of all employees of the Respondents who persisted in promoting the cause of the Charging Union as against Local 223, the organization favored by the other Respondents; and, if we accept the Trial Examiner's findings, certain of the Respondents by their conduct showed not only a disregard for the guarantees of the Act but also for the Board's judicial processes by discharging employees because they had been subpoenaed by the General Counsel to testify against 2 of the Respondents and, in the case of Respondent Sweeney, by urging a prospective witness for the General Counsel either to falsify her testimony or "take a trip."

Thus, the violations charged to the Respondents not only run the entire gamut of employer unfair labor practices,

but also include at least one novel variation.[11] We do not say that the Board's jurisdiction should depend on the seriousness of the offenses alleged. We wish to point out only that the nature of the charges and of the Trial Examiner's findings in this case, and the records of other proceedings against union-employers in the Board's files cast grave doubt on the validity of any tacit assumption by the

[11] No case has been found in the entire 20 years of the Board's experience where a respondent has visited reprisals upon Board witnesses even before they had testified.

majority that employees of labor unions do not need the protection of the Act; and such charges, findings and records tend to vindicate the fears expressed by witnesses at the hearings before the Senate Labor Committee in 1934 on the original Wagner Bill (S. 2926), which proposed to exclude all employees of labor unions from the protection of the Act.[12] Those witnesses opposed such exclusion on various grounds, including the naivete of any view that unions could be "trusted to deal fairly with those who work for them." [13] It was presumably because of these considerations and because of the patent danger that in hiring their own employees unions might discriminate against nonmembers, that the Senate Labor Committee, in reporting the 1934 Bill, proposed to modify the blanket exclusion of unions from the definition of "employer" by inserting the present parenthetical language which includes labor unions as an employer "when acting as an employer."[14]

In explaining the reasons for this change, the 1934 Senate Labor Committee Report stated:

---

[12] While, as stated in the majority opinion, the instant proceeding is the first case actually to be decided by the Board in which a labor organization has been charged with unfair labor practices against its own employees, a partial search of the Board's files shows that since 1947 charges have been filed against unions as employers in 28 cases, not including the instant proceeding. Fifteen of these cases contained a charge of discrimination against one or more employees in violation of Section 8 (a) (3) of the Act. One case charged a violation of Section 8 (a) (4) of the Act. In 13 cases unions were charged, as employers, with refusing to bargain with other unions, in violation of Section 8 (a) (5) of the Act. Independent violations of Section 8 (a) (1) were alleged in 2 cases. Of these 28 cases, one is still pending before the General Counsel on appeal from a Regional Director's dismissal on the merits of the charge filed, one was disposed of by a formal settlement agreement, 15 were withdrawn by the charging party, and 11 were dismissed as lacking merit.

[13] See Board Compilation of Legislative History of NLRA, 1935, pp. 720, 940, 1192.

[14] Thus modified, Section 2 (2) of the 1934 Bill read, as does the present Act: "The term 'employer' . . . shall not include . . . any labor organization (other than when acting as an employer) . . ."

The reason for stating that 'employer' excludes 'any labor organization, other than when acting as an employer' is this: In one sense every labor organization is an employer, it hires clerks, secretaries and the like. In its relations with its own employees, a labor organization ought to be treated as an employer, and the bill so provides. But in relation to other employees, it ought not to be treated as an employer, and ought to have the right to use lawful means to induce employees to join the organization.[15]

As the 1934 bill was not acted upon by Congress, a new bill (S. 1958) was introduced by Senator Wagner in 1935, which again contained a blanket exclusion of labor unions from the definition of "employer," omitting the parenthetical language proposed by the Senate Labor Committee in 1934. That language was, however, restored by the Committee in the new Bill as reported by it, the reasons given for such restoration being substantially the same as those cited in the 1934 Report quoted above;[16] and that language was retained without change in the Bill as finally enacted and in the 1947 Taft-Hartley Amendments.

It is clear from the foregoing that Congress contemplated that, by including labor organizations in the definition of employer, it was extending the protection of the Act not only to persons employed in "commercial" activities of labor organizations but also to the clerks and secretaries, hired to assist in carrying out the conventional, non-commercial functions of a labor union. The instant decision nullifies that purpose of Congress by holding that it would not effectuate the policies of the Act to assert jurisdiction over non-commercial activities of labor unions, thus denying the protection of the Act to the very "clerks" and "secreta. es" referred to in the Senate Committee Report.

---

[15] Board Compilation of Legislative History of NLRA, 1935, p. 1102.
[16] Id., p. 2305.

It is true that the Board has a broad discretion in determining whether the assertion of its jurisdiction in a particular case will effectuate the Act's policies. However, in exercising that discretion in the past, the Board has shown a commendable respect for the views of Congress, as gleaned from legislative history, with regard to the proper bounds of Board action. Thus, in *Hotel Association of St. Louis*,[17] in declining to assert jurisdiction over the

hotel industry, the Board relied upon a comment by Senator Taft made on the Senate floor 2 years after the enactment of the present statute and upon other "post-legislation" history. Yet, here, the majority would give no effect to the statement quoted above from the Senate Committee Report, which *antedaded* Congressional action on the provision under consideration, and which manifests an intent that the Board make its processes available to employees engaged in non-commercial activities of labor unions.

We do not believe that the force of this legislative history is impaired by the language quoted by the majority from the Conference Report on the Taft-Hartley Act relating to the exclusion of nonprofit organizations from the definition of "employer". There is no indication in that Report that, in approving the Board's policy of declining to assert jurisdiction over noncommercial activities of nonprofit organizations, the conferees had in mind labor unions. The Board had not at that time had occasion to resolve the question of its jurisdiction over labor unions. (In the only subsequent case other than the instant proceeding in which that question arose, a representation case, the Board asserted jurisdiction and directed an election in a unit of employees performing conventional labor union functions.[18]

---

[17] 92 NLRB 1388.

[18] *Air Line Pilots Association*, 97 NLRB 929. Included in the unit were contract negotiators and organizers.

We fail to find that this decision evoked any Congressional strictures.)

Moreover, the language of the Conference Report quoted by the majority should be read in context with the rest of the paragraph in which it appears and the legislative provisions to which it refers. Section 2 (2) of the Taft-Hartley Bill passed by the House (H. R. 3020) amended Section 2 (2) of the Wagner Act by inserting immediately after the language including in the definition of "employer" labor organizations "when acting as an employer", language excluding from that definition "any corporation, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which

1800

inures to the benefit of any private shareholder or individual." As passed by the Senate, however, this Bill, in lieu of the foregoing broad exclusion of nonprofit organizations devoted to religious or charitable purposes, etc., excluded only any nonprofit corporations and associations operating hospitals. The conferees adopted this more limited exclusion favored by the Senate, and it was in explanation of this action that the statement was made which is quoted in part by the majority from the Conference Report. The entire statement, insofar as here relevant, is as follows:

> The conference agreement . . . follows the Senate amendment in the matter of exclusion of nonprofit corporations and associations operating hospitals. The other nonprofit organizations excluded under the House bill are not specifically excluded in the conference agreement, for only in exceptional circumstances and in connection with purely commercial activities of such organizations have any of the activities of *such* organizations or of their

employees been considered as affecting commerce so as to bring them within the scope of the National Labor Relations Act."[19] (emphasis added).

It seems clear from the foregoing that the antecedent of "such organizations" in the excerpt quoted is not nonprofit organizations generally (including unions) as the majority opinion implies, but only the specific categories of nonprofit organizations enumerated in the House Bill. That these categories were not deemed to include labor unions follows from the fact that the exclusion of nonprofit organizations in the House Bill was immediately preceded by the familiar language including labor unions as employers "when acting as an employer." It is unrealistic, in any case, to believe that a Congress which, animated by a desire to make the Wagner Act a two-way street, adopted an elaborate code of restrictions upon labor unions, could have intended to strike down in whole or in part the only limitations in the Wagner Act upon labor union conduct. Such a view not only takes language out of context but ignores the mood of Congress in passing the Taft-Hartley Act.

We would, therefore, affirm the Trial Examiner and assert jurisdiction over all the Respondents herein.

1801

In any case, even if one accepts the view of the majority that the Board should not assert jurisdiction over the noncommercial activities of labor unions, it is difficult to understand how the operations of Security Plan Office can be classified as "noncommercial." As found by the Trial Examiner, this office, in Portland, Oregon, is a separate legal entity from the other Respondents. It receives contributions from about 2,000 employers, parties to collective bargaining agreements with Teamster locals. In accordance with the provisions of these agreements, the Security Plan

[19] House Report No. 510, 80th Cong. 1st Sess., p. 32.

Office uses these contributions, currently about $2,000,000 per annum, to defray the cost of health and welfare insurance policies purchased from a life insurance company in Los Angeles, California. The Security Plan Office, itself, processes claims under these policies and acts as disbursing agent for the insurance company in paying such claims, for these services, that office receives an allowance from the insurance company equal to 4 percent of total premiums.

It is apparent from the foregoing that the Security Plan Office performs functions ordinarily associated with insurance brokers and underwriters. Under the Wagner Act, the Board, with the approval of the Supreme Court,[20] asserted jurisdiction over a fraternal organization relying on the fact that it provided death, disability, and accident, benefits (on a nonprofit basis), to its members and their beneficiaries. More recently, the Board in an unpublished decision, asserted jurisdiction over insurance operations of the Knights of Columbus.[21] Accordingly, even if we equate labor unions and their agencies with other nonprofit organizations for jurisdictional purposes, as the majority does, it is not clear why their operations in the insurance field should be treated as non-commercial while similar operations of other nonprofit organizations for the benefit of their members are regarded as commercial. We believe that even under the rule announced by the majority limiting the Board's exercise of jurisdiction to commercial operations of unions, jurisdiction should be asserted over Security Plan Office.

Dated, Washington, D. C., August 25, 1955

PHILIP RAY RODGERS
Member
BOYD LEEDOM
Member
National Labor Relations Board

---

[20] *Polish National Alliance* v. *N.L.R.B.*, 322 U.S. 643.
[21] *Knights of Columbus*, 1-RC-3913 (1955).

(1802)

1802

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of SEE ATTACHED SHEETS

AFFIDAVIT OF SERVICE OF DECISION AND ORDER (IR attached)

DATE OF MAILING August 25, 1955

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Richard R. Morris, Esquire
618 Failing Building
Portland 4, Oregon

69448

PLAIN MAIL TO:

Oregon Teamsters' Security Plan Office and William C. Earhart, administrator thereof, and Teamsters Security Administration Fund and Warehousemen Local No. 206, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America
1020 N. W. Third Avenue
Portland 12, Oregon

Anderson, Franklin & Landye
Att: James Landye, Esquire
333 American Bank Building
Portland, Oregon

69449

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Teamsters Building Association, Inc.
1020 N. W. Third Avenue
Portland 12, Oregon

Bassett, Geisness & Vance
Att: Samuel B. Bassett, Esquire
New World Life Building
Seattle 4, Washington

69450

Office Employees International Union, Local #11
Att: James N. Beyer
1008 S. W. Sixth Avenue
Portland, Oregon

Bailey & Lezak
Att: Paul T. Bailey, Esquire
1130 Southwest 3rd
Portland, Oregon

69451

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and its Local No. 223, Grocery, Meat, Motorcycle & Misc. Drivers
1020 N. W. Third Avenue
Portland 12, Oregon

NLRB—36th Subregion
Room 326, U. S. Court House
620 S. W. Main Street
Portland 4, Oregon

69452

Warehousemen' Local No. 206,
a/w IBTCWHA, AFL
1020 N. W. Third Avenue
Portland 12, Oregon

NLRB—19th Region
407 U. S. Court House
5th Avenue & Spring
Seattle 4, Washington

69453

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; AFL, and Joint Council of Drivers No. 37
1020 N. W. Third Avenue
Portland 12, Oregon

(over)

/s/ JAMES ARMISTEAD

Subscribed and sworn to before me this ..... day of ....., 1955.

DANA I. WILSON
Designated Agent
National Labor Relations Board

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and its Agent, John J. Sweeney and Oregon Teamsters Security Plan Office and William C. Earhart, Administrator and of Teamsters Security Administration Fund
1020 N. E. Third Avenue
Portland 12, Oregon

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers
of America, AFL
100 Indiana Avenue, N. W.
Washington, D. C.

1803

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 36-CA-410

OREGON TEAMSTERS' SECURITY PLAN OFFICE and
WILLIAM C. EARHART, Administrator thereof,
and of TEAMSTERS SECURITY ADMINISTRATION FUND;
and WAREHOUSEMEN LOCAL No. 206, affiliated with
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

and

Case No. 36-CA-637

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and TEAMSTERS BUILDING ASSOCIATION, INC.

and

Case No. 36-CA-638

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,
and its LOCAL No. 223, GROCERY, MEAT, MOTORCYCLE
AND MISCELLANEOUS DRIVERS

and

Case No. 36-CA-639

WAREHOUSEMEN LOCAL No. 206, affiliated with the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

and

Case No. 36-CA-647

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and JOINT COUNCIL OF DRIVERS, No. 37

and

Case No. 36-CA-648

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, and its Agent, JOHN J. SWEENEY, and OREGON TEAMSTERS' SECURITY PLAN OFFICE, and WILLIAM C. EARHART, Administrator thereof, and of TEAMSTERS SECURITY ADMINISTRATION FUND

and

OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11

1804

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 R. R. Morris.....
(Signature or name of addressee)

2 .....
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....*Aug 27, 1955*..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 James Landye .....
(Signature or name of addressee)

2 .....

(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....8-27, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Bassett, Geisness & Vance.....

(Signature or name of addressee)

2 G. Roper .....

(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....Aug 29, 1955..

.....

1805

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Bailey & Lezak.....

(Signature or name of addressee)

2 .....

(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery.....8-27, 1955..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 Nerh .....
(*Signature or name of addressee*)

2 N. Mans .....
(*Signature of addressee's agent—Agent should enter addressee's name on line ONE above*)

Date of delivery.....*8-29, 1955*..

.....

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the number of which appears on the face of this Card.

1 NLRB .....
(*Signature or name of addressee*)

2 M. Klippel .....
(*Signature of addressee's agent—Agent should enter addressee's name on line ONE above*)

Date of delivery.....*Aug 29, 1955*..

.....

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,896, October Term, 1955

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 11,
Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD, *Respondent*

Before: Prettyman, Circuit Judge, in Chambers.

ORDER

Counsel for the parties to this case having appeared before me pursuant to Rule 38(k) of this Court and counsel having submitted to me a prehearing stipulation, and counsel having reported to me that they are in substantial agreement as to the portions of the record to be printed and that the provisions of paragraphs 2 and 4 of the stipulation with regard to the printing of the record are merely precautionary, and having considered said stipulation, I approve the stipulation of the parties and order that said stipulation be filed.

It is FURTHER ORDERED that the parties proceed according to the prehearing stipulation and that this order and the prehearing stipulation be printed in the joint appendix.

Dated: November 15, 1955

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL No. 11,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

No. 12,896

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to the approval of the Court, hereby stipulate and agree as follows with respect to the issues and the procedure and dates for the filing of the briefs and joint appendix to briefs herein:

I.

THE ISSUE

This case is before the Court upon the petition of Office Employes International Union, Local No. 11, the charging

union before the National Labor Relations Board, to review the dismissal by the Board on jurisdictional grounds of a complaint alleging that Oregon Teamsters' Security Plan Office and various other divisions, locals or agents of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called the Teamsters organizations, had violated Section 8(a)(1), (2),(3),(4) and (5) of the Act.

The issue presented is whether the Board properly refused to assert jurisdiction over the Teamsters organizations.

II.

Procedure With Respect to Filing of Briefs, Designation of Record and Printing of Joint Appendix

For the purpose of facilitating the work of the Court and the parties, the parties agree:

1. That petitioner will file its printed brief on or before December 5, 1955, and the Board will file its printed brief on or before January 3, 1956. Petitioner may file a reply brief on or before January 18, 1956. Should adherence to the aforesaid dates become impractical, the parties will, subject to the approval of the Court, agree upon a revised set of dates.

2. With respect to designations of portions of the record which the parties desire to have included in the joint appendix, it is agreed that prior to the filing of their respective briefs, each party will furnish the other a designation of parts of the record upon which he intends to rely.

3. In their respective briefs the parties will not refer to the page numbers of the joint appendix (which will be centered at the bottom of the page but instead will refer

to those numbers which are centered in bold face type in the body of the appendix and which also appear in brackets in the upper outside corner of each page. The bold face numbers correspond with the page numbers of the typewritten transcript of the testimony, and the pages of the Intermediate Report, Exceptions, and Decision and Order which have been renumbered to correspond with the pages of the record certified to the Court. References to exhibits of the General Counsel and the Teamsters will be designated "G.C. Ex." and "R. Ex." respectively.

4. It is further agreed and stipulated that any party and the Court, at and following the hearing in the case, may refer to any portion of the original transcript of record herein which has not been printed to the same extent and effect as if such portions of the transcript had been printed, it being understood that any portions of the record thus referred to will be printed in a supplemental point appendix if the Court directs the same to be printed.

JOSEPH E. FINLEY
Joseph E. Finley
Attorney for Petitioner

Dated November 10, 1955.

MARCEL MALLET-PREVOST
Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 11,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

PETITION TO SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

This is a petition to set aside an order of the National Labor Relations Board pursuant to Sec. 10 (f) of the National Relations Act, 29 U.S.C. Sec. 160 (f), such order having been made in a case before the National Labor Relations Board known as Oregon Teamsters' Security Plan Office, et al, Case No. 36-CA-410, 36-CA-637, 638, 639, 647, and 648, dated August 25, 1955, and reported as 113 NLRB No. 111.

Charges were filed under Sec. 10 (b) of the National Labor Relations Act by Petitioner against various organizations, hereinafter designated, and a complaint was issued in Case No. 36-CA-410 by the General Counsel of the National Labor Relations Board on June 25, 1954. Thereafter, on August 13, 1954, and August 17, 1954, complaints were issued by the General Counsel against other respondent organizations. The parties respondent, against whom charges were filed by Petitioner herein, in this NLRB proceeding were: (1) Oregon Teamsters' Security Plan Office and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund; and Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, No. 36-CA-410; (2) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Teamsters Building Association, Inc., No. 36-CA-637; (3) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its Local No. 223, Grocery, Meat, Motorcycle and Miscellaneous Drivers, No. 36-CA-638; (4) Warehousemen Local No. 206, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, No. 36-CA-639; (5) International Brotherhood of Teamsters, Chauffeurs.

Warehousemen and Helpers of America, AFL, and Joint Council of Drivers, No. 37, No. 36-CA-647; (6) International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and its Agent, John J. Sweeney, and Oregon Teamsters' Security Plan Office, and William C. Earhart, Administrator thereof, and of Teamsters Security Administration Fund, No. 36-CA-648.

In its decision and order in these proceedings, reported at 113 NLRB No. 111, the National Labor Relations Board ruled, by a 3-to-2 majority, that it would not assert jurisdiction over these respondents, and ordered the complaints dismissed.

The National Labor Relations Board is located in the District of Columbia and this petition is being brought in this Court pursuant to Sec. 10(f) of the National Labor Relations Act, 29 U.S.C. Sec. 160 (f).

Relief is sought on the grounds that the order of the National Labor Relations Board dismissing the complaints on the ground that it would not assert jurisdiction over the NLRB respondents in the proceeding before that agency, is erroneous and contrary to law, and in specific contravention of the terms of Sec. 2(2) of the National Labor Relations Act, 29 U.S.C. Sec. 152(2), and other sections of that statute.

Petitioner herein, having filed the charges against the various respondents in the NLRB proceeding, and having been listed by the Board as one of the parties in that proceeding, is an "aggrieved person" within the meaning of Sec. 10 (f) of the National Labor Relations Act, and thereby entitled to bring this petition.

WHEREFORE, Petitioner respectfully prays that this Court set aside the aforesaid order of the National Labor Relations Board and remand the cause to the National Labor

Relations Board directing that agency to assume its statutory jurisdiction over the aforesaid NLRB respondents and decide the issues in that cause in accordance therewith.

Respectfully submitted
JOSEPH E. FINLEY
Joseph E. Finley
Attorney for OFFICE EMPLOYES INTERNATIONAL UNION, LOCAL No. 11, *Petitioner*
810—18th St. N. W.
Washington, D. C.
ST 3-2677

[fol. 260] United States Court of Appeals for the District of Columbia Circuit. Filed February 23, 1956.

Received. Sep. 14, 1956. Office of the Clerk Supreme Court, U. S.

[fol. 261] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12896

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 11, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review and Set Aside an Order of the National Labor Relations Board

Mr. Joseph E. Finley for petitioner.

Miss Fannie M. Byols, Attorney, National Labor Relations Board, with whom *Mr. Marcel Mallet-Prevost,* Assistant General Counsel, National Labor Relations Board, was on the brief, for respondent.

Messrs. Clifford D. O'Brien and *Richard Frank* filed a brief as *amici curiae,* urging affirmance.

OPINION—June 21, 1956

Before PRETTYMAN, BAZELON and DANAHER, Circuit Judges.

PRETTYMAN, *Circuit Judge:* Petitioner, as its name implies, is a labor union primarily representing office and clerical employees. It filed with the Labor Board charges against a group of other organizations, mostly unions, known in this litigation collectively as the Teamsters. It alleged many unfair labor practices in respect to certain of the Teamsters' office and clerical employees. The dis-

senting Board members observed that "the violations to the Respondents [the Teamsters] not only run the entire [fol. 262]gamut of employer unfair labor practices, but also include at least one novel variation." The Board itself said: "This is the first proceeding to be decided by the Board in its 20-year history in which labor organizations have been charged with committing unfair labor practices as employers in dealing with their own employees." An Examiner, after hearing, found most of the charges sustained. The Board did not disturb those findings or conclusions but found that the policies of the Act would not be effectuated by asserting jurisdiction in the proceeding, and so it dismissed the complaints in their entireties.

The Board agreed with the Examiner's interpretation of Section 2(2) of the Act,[1] that labor organizations are employers with respect to their own employees. The Board then said it must determine in respect to these respondents (the Teamsters), as in respect to all other employers, whether they are engaged in commerce or activities affecting commerce and, if so, whether the policies of the Act would be effectuated by asserting jurisdiction over them.

Proceeding with the inquiry the Board first found that these unions are non-profit organizations. It then applied to them the standards it says it regularly applies to non-profit organizations, citing cases to illustrate the application to universities, orchestras and such. It says it asserts jurisdiction over such organizations "only in exceptional circumstances and in connection with purely commercial activities". It found the Teamsters' activities to be, "obviously, not substantial engagement in a commercial venture" within the meaning of its rules. The foregoing was enough to dispose of the cases.

[fol. 263] Cast in the frame indicated by the foregoing we think the decision fell within the broad discretion which seems to be established as applicable to the Board's actions

---

[1] 61 STAT. 137 (1947), 29 U.S.C.A. § 152(2), providing in pertinent part: "The term 'employer' * * * shall not include * * * any labor organization (other than when acting as an employer) * * *."

in entertaining complaints. For example, in *Labor Board* v. *Denver Bldg. Council*,[2] the Supreme Court said:

> "Even when the effect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case."

Other cases are to the same effect.[3]

The Board did not hold that labor organizations are not employers in respect to their employees. It held that they are. It held that Section 2(2) of the Act placed labor organizations in precisely the same status under the Act as are all other employers. It then applied to these respondent employers the rules it has already established for other employers. To be sure, this is not a case in which the Board had merely to apply to this union a rule theretofore established by it relative to unions. In this case, the first involving unfair labor practice charges against a union, the Board fashioned a rule out of the material and criteria theretofore established by it for use in a certain category. It found the criteria customarily applied to that category applicable to a union. In essence it treated the union as an employer.

[fol. 264] It is argued by petitioner that by inserting the specific provision in Section 2(2) Congress removed from the area of Board discretion the jurisdiction of the Board in respect to labor organizations. We think the provision cannot be given so broad an effect. It put labor organi-

---

[2] 341 U.S. 675, 684, 95 L.Ed. 1284, 71 S.Ct. 943 (1951).

[3] Labor Board v. I. & M. Electric Co., 318 U.S. 9, 18, 87 L.Ed. 579, 63 S.Ct. 394 (1943); National Labor Relations Bd. v. Newark Morning L. Co., 120 F.2d 262, 268 (3d Cir. 1941), *cert. denied*, 314 U.S. 693, 86 L.Ed. 554, 62 S.Ct. 363 (1941); Haleston Drug Stores v. National Labor Relations Bd., 187 F.2d 418, 420-422 (9th Cir. 1951); Local Union No. 12 v. National Labor Relations Board, 189 F.2d 1, 3-5 (7th Cir. 1951).

zations in the category of employers as to their own employees, but it did no more than that.

The conclusions of the Board with reference to the non-profit character of these labor organizations, the reasoning with which it supports its criteria for jurisdiction, and the applicability of those criteria to the Teamsters are rational. We cannot say they are arbitrary or capricious. Our function in these areas of administrative discretion goes no further.

In the course of its opinion the Board expressly overruled a prior case[4] in which it had assumed jurisdiction in a representation matter involving a union and its employees. But the Board has power to change its mind, just as a court does, and both of two conflicting views are often rational, neither arbitrary nor capricious.

The Board in its "Decision and Order" went on to say that, even if the criteria applicable to non-profit organizations generally were not applied to the Teamsters, the Board would not assert jurisdiction, because no other existing jurisdictional criteria apply. The Board said:

> "We do not believe that labor organizations, which, when engaged in their primary function of advancing employee welfare, are institutions unto themselves within the framework of this country's economic scheme, should be made subject to any of the standards originated for business organizations. Accordingly, we would, at least, require for labor organizations as employers the establishment of a jurisdictional standard contemplating the singular characteristics of their institutional operations. In presenting this case for Board determination the General Counsel failed to suggest any such standard."

[fol. 265] The Board did not rest its conclusions and order on this latter part of its opinion and did not discuss the matter in its brief here. We need not treat of it but are constrained to comment that under the statutory scheme of organization the General Counsel to the Board does not seem to us to have a responsibility for the formulation

---

[4] Air Line Pilots Association, 97 N.L.R.B. 929 (1951).

of jurisdictional criteria for the Board itself. He has responsibility for filing complaints. In so far as the Board itself has a discretion in respect to jurisdiction over complaints once filed, it must take the responsibility for its own standards.

The order of the Board will be

Affirmed.

BAZELON, *Circuit Judge*, dissenting:

I think § 2(2)'s strikingly particular reference to labor unions sharply differentiates them from non-profit organizations generally and subjects them to the jurisdiction of the Act in respect to their own employees. Hence I think the Board erred in applying standards governing non-profit organizations generally as a basis for refusing to assert jurisdiction.

[fols. 266-267] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,896

OFFICE EMPLOYEES INTERNATIONAL UNION, LOCAL NO. 11, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review and Set Aside an Order of the National Labor Relations Board

Before Prettyman, Bazelon and Danaher, Circuit Judges

JUDGMENT—June 21, 1956

This case came on to be heard on the record from the National Labor Relations Board, and was argued by counsel.

On Consideration Whereof, It is hereby ordered and adjudged by this Court that the order of the said National

Labor Relations Board on review in this case be, and the same is hereby, affirmed.

Dated: June 21, 1956.

Per curiam.

Separate dissenting opinion by Circuit Judge Bazelon.

[fol. 268] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 269] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 422

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed November 13, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.